



# भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 2

PART II — Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।  
Separate paging is given to this Part in order that it may be filed as a separate compilation.

## LOK SABHA

The following Bills were introduced in Lok Sabha on 9th August, 2012:—

BILL NO. 74 OF 2011

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (Amendment) Act, 2011.

Short title and  
commence-  
ment.

(2) It shall come into force at once.

2. In Part VI, after Chapter VI, the following Chapter and article shall be inserted, namely:—

Insertion of  
new Chapter  
VIA.

"CHAPTER VIA.—SERVICES UNDER THE STATE GOVERNMENT

237A. (1) Subject to provisions of article 315, all appointments of persons to any service in any class or post in a State shall be made by the Governor of that State.

Appointment  
of persons to  
serve under  
State  
Government.

(2) The conditions of service of persons appointed under clause (1) shall be such as the legislature of the State may by law determine.

3. Article 312 shall be omitted.

Omission of  
article 312.

## STATEMENT OF OBJECTS AND REASONS

The present structure of bureaucracy at the Union and State level is a legacy of the colonial era. At that time the administration was highly centralised and the officers appointed by the Central Government were given top jobs in the States with a view to maximize revenue collection and keep a tab on the happenings within the provinces. We chose to continue with this system even after independence, principally because continuity in administration was considered to be necessary for a country which had just emerged from long years of foreign rule. It was also felt that retaining such services would help preserve unity and integrity of the country. But now, the nature of administration has changed from revenue collection to welfare of the citizens. When we are moving towards decentralized Government rather than centralized Government, particularly after the seventy-third and seventy-fourth amendment of the Constitution taking democracy to the grass-root level and when federalism is the order of the day, we need to review the necessity of having All India Services, in particular, the Indian Administrative Service and the Indian Police Service. In fact the very idea of officers appointed by the Union Government taking senior positions in States runs contrary to the federal structure of our nation.

The State Government should have the power to appoint and regulate the conditions of service of all officers serving under them. It will not only allow appointment of such officers who are better conversant with the ground realities existing in a State and so, in a better position to formulate and implement development strategies, but the officers can also be better groomed to the needs of the State. All over world, the focus is now shifting towards specialist administrators, *i.e.*, administrators who are specialists in their respective area of operation, as a means to ensure faster pace of development. This purpose would also be served if the States are given greater autonomy in the appointment of their officers.

Therefore, an amendment is proposed in the Constitution to ensure that State Governments are able to appoint officers at all levels within the State.

NEW DELHI;  
July 29, 2011.

L. RAJAGOPAL

## BILL NO. 51 OF 2011

A Bill further to amend the Land Acquisition Act, 1894.

BE it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

1. This Act may be called the Land Acquisition (Amendment) Act, 2011.

Short title.

1 of 1894.

2. After section 44B of the Land Acquisition Act, 1894, the following section shall be inserted, namely:—

Insertion of new section 44C.

"44C. Notwithstanding anything contained in this Act, no land belonging to any place of worship shall be acquired by the appropriate Government for any private company or Government Company or for any public purpose except for the purpose of constructing houses for persons living below poverty line.

Restriction as to acquisition of land belonging to any place of worship by the appropriate Government.

*Explanation.*—For the purpose of this section, 'persons living below poverty line' means persons who may be declared as such by the appropriate Government from time to time."

## STATEMENT OF OBJECTS AND REASONS

'Land' is the most precious resource of the country and the Land Acquisition Act enables the Government to acquire land for public purposes.

In yester years, philanthropists, patrons, kings, Governments and other ruling classes used to donate land to temples, mosques and churches generously for development of their communities and also to help poor people belonging to the respective communities.

Now, the land belonging to temples, mosques and churches can be acquired by Government, after following due process of law, for public purposes as prescribed under the Land Acquisition Act, 1894. But, it has been often seen that Government is acquiring land belonging to temples, mosques and churches for private companies in the pretext of 'public purpose'. This is clearly against the spirit of the Act and also defeats the objective with which philanthropists, patrons, kings, etc., donated land to temples, mosques and churches.

The objective of the Bill is to amend the existing Land Acquisition Act, 1894, by inserting a new section 44C to provide guidance to the Governments and also mandate that Governments can acquire land belonging to temple, mosque or church only for housing purpose for people belonging to families living below poverty line.

Hence this Bill.

NEW DELHI;  
July 29, 2011.

L. RAJAGOPAL

## BILL NO. 92 OF 2011

A Bill to provide for the declaration and recognition of national assets and for matters connected therewith.

BE it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

- |  |   |
|--|---|
| 1. (1) This Act may be called the National Assets (Protection) Act, 2011.  | Short title,<br>extent and<br>commencement.             |
| (2) It extends to the whole of India.  |   |
| (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.                                       |   |
| 2. Notwithstanding anything contained in any other law for the time being in force, the following shall be recognized as National assets and protected as such:— | Declaration<br>and protection<br>of National<br>Assets. |
| (i) Peacock—the National Bird;   |   |

- (ii) Lotus—the National Flower;
- (iii) Tiger—the National Animal;
- (iv) Ganga—the National River;
- (v) Cow and its progeny; and
- (vi) Yathartha Geeta—National Book.

Punishment.

**3. Whoever,—**

(i) causes any injury or kill or attempt to kill any animal or bird protected as National Assets under this Act; or

(ii) causes to pollute or damage river Ganga in any manner; or

(iii) mutilates, burns or shows disrespect to the National Book,

shall be punished with imprisonment for a term of five years and shall also be liable to pay a fine not exceeding rupees one lakh.

Power to make  
rules.

**4. (1)** The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of the Act.

(2) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both the Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

#### STATEMENT OF OBJECTS AND REASONS

Since time immemorial, certain things in our country have been recognized as sacred and national assets. Steps have been taken by successive Government to preserve and protect them and to give them their due place in events of national importance. Infact, the Project Tiger was started to protect the tiger from extinction, as tiger was considered as the national animal. The Ganga Action Plan was started to cleanse and protect river Ganga. Similarly, our national bird Peacock is on the verge of extinction, and therefore needs immediate steps to protect it. Moreover, replicas of Peacock, Lotus and Tiger are used in National events and functions to showcase our national pride in having them in our country. But cases of showing disrespect to these symbols of national pride by causing injury to them or killing them or damaging or by acts of polluting have increased. If we are to protect our national assets, we have to take stringent action to ensure its safety and preservation.

The Bill seeks to preserve and protect these national assets.

Hence this Bill.

NEW DELHI;  
*August 24, 2011.*

A.T. NANA PATIL

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#### MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 4 of the Bill empowers the Central Government to frame rules for carrying out the purposes of the Bill. The rules will relate to matters of detail only, and as such the delegation of legislative power is of a normal character.

## BILL NO. 91 OF 2011

A Bill further to amend the Ancient Monuments and Archaeological  
Sites and Remains Act, 1958.

BE it enacted by Parliament in the Sixty-second Year of the Republic of India as  
follows:—

Short title  
and  
commence-  
ment.

1. (1) This Act may be called the Ancient Monuments and Archaeological Sites  
and Remains (Amendment) Act, 2011.

(2) It shall come into force at once.

Amendment  
of section  
20A.

2. In section 20A of the Ancient Monuments and Archaeological Sites and Remains  
Act, 1958 (hereinafter referred to as the principal Act), in sub-section (1),—

24 of 1958.

(i) for the words "one hundred meters", the words "fifty meters" shall be  
substituted; and

(ii) the proviso shall be omitted.



3. In section 20B of the principal Act,—
- (i) for the words "two hundred meters", the words "one hundred meters" shall be substituted; and
- (ii) the first proviso shall be omitted.
- Amendment of section 20B.
4. In section 20C of the principal Act, in sub-section (1), for the words, "before the 16th day of June, 1992," the words, "on the date of coming into force of the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010" shall be substituted.
- Amendment of section 20C.
5. In section 20-I of the principal Act, in sub-section (1), after clause (b), the following clause shall be inserted, namely:—
- "(ba) prepare plans for beautification, renovation and development of ancient monuments and archaeological sites and upgradation and creation of infrastructural facilities in and around the ancient monuments and archaeological sites."
- Amendment of section 20-I.
6. After section 20Q of the principal Act, the following section shall be inserted, namely:—
- "20R. The Central Government shall make available adequate funds for development of all monuments and archaeological sites and creation and upgradation of infrastructure at such sites, as recommended by the Authority under clause (ba) of sub-section (1) of section 20-I".
- Insertion of new section 20Q.
- Central Government to provide funds for development of all monuments and archaeological sites.

### STATEMENT OF OBJECTS AND REASONS

The Ancient Monuments and Archaeological Sites and Remains Act, 1958 was amended in 2010 which came as a shock to thousands of people owning properties near monuments and sites covered under the Act. With the coming into force of the Act, thousands of people can no longer construct or repair or renovate their properties because of the restriction imposed by the Act on any such activity within the stipulated distance from the monuments.

Several public projects have come to standstill or have been disallowed due to restrictions imposed under the Act. On the one hand public are suffering that they are not allowed to undertake any construction activity and on the other hand public works have been stalled.

There are thousands of monuments in our country which are lying in a dilapidated condition. They are misused by anti-social elements for illegal activities. A situation has arisen that these monuments are neither improved nor used for any purpose nor any construction activity is allowed near the monuments. It is accordingly proposed to renovate/upgrade facilities in these sites so as to exploit its tourism potential. The Bill seeks to amend the Act, with a view to mitigate the difficulties faced by the people, it is proposed to relax the restrictions imposed under the Act.

Hence this Bill.

NEW DELHI;  
August, 25, 2011.

A.T. NANA PATIL

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### FINANCIAL MEMORANDUM

Clause 6 of the Bill provides that the Central Government shall make available adequate funds for preparing plan for beautification, renovation, development, upgradation, creation of infrastructural facilities in and around ancient monuments and archaeological sites. The Bill, therefore, if enacted, would involve expenditure from the Consolidated Fund of India. It is likely to involve a recurring expenditure of about rupees five thousand crore per annum.

A non-recurring expenditure of about rupees one thousand crore is also likely to be involved.

## BILL NO. 75 OF 2012

A Bill further to amend the Pre-conception and Pre-natal Diagnostic Techniques  
(Prohibition of Sex Selection) Act, 1994.

BE it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Pre-conception and Pre-natal Diagnostic Techniques  
(Prohibition of Sex Selection) Amendment Act, 2012.

Short title and  
commence-  
ment.

(2) It shall come into force on such date as the Central Government may, by notification  
in the Official Gazette, appoint.

2. In section 2 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition  
of Sex Selection) Act, 1994 (hereinafter referred to as the principal Act), after clause (a), the  
following clause shall be inserted, namely:—

Amendment  
of section 2.

"(aa) "appropriate Government" means in the case of a State, the Government of  
that State and in other cases, the Central Government;"

Insertion of  
new  
section 6A.

3. After section 6 of the principal Act, the following section shall be inserted, namely:—

Prohibition on  
removal of  
female foetus.

"6A. On and from the commencement of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Amendment Act, 2012, no person or genetic counselling centre or genetic laboratory or genetic clinic, after having conducted pre-natal diagnostic procedure or test, shall conduct or cause to be conducted any surgical or any other procedure or administer medication or cause to be administered medication in any manner with the intention to remove the female foetus."

Amendment of  
section 23.

4. In section 23 of the principal Act,—

'(i) in sub-section (1), for the words "punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees and on any subsequent conviction, with imprisonment which may extend to five years and with fine which may extend to fifty thousand rupees", the words "punishable with imprisonment for a term which may extend to four years and with fine which may extend to one lakh rupees and on any subsequent conviction, with imprisonment which may extend to ten years and with fine which may extend to five lakh rupees" shall be substituted.'

(ii) after sub-section (4), the following sub-section shall be inserted, namely:—

"(5) Any person or organization, by whatever name called who aids or abets the commission of offence of removal of female foetus or withholds information regarding commission of such offence shall be punished with imprisonment for a term which may extend to two years and with fine which may extend to fifty thousand rupees."

Amendment of  
section 25.

5. In section 25 of the principal Act, for the words "punishable with imprisonment for a term which may extend to three months or with fine, which may extend to one thousand rupees or with both", the words "punishable with imprisonment for a term which may extend to six months or with fine, which may extend to ten thousand rupees or with both" shall be substituted.

Insertion of  
new Chapter  
VIIA.

6. After Chapter VII of the principal Act, the following Chapter shall be inserted, namely:—

#### "CHAPTER VIIA

#### ESTABLISHMENT OF FAST TRACK COURTS

Procedure to  
deal with  
offences  
committed  
under the Act.

28A. Notwithstanding anything contained in this Act, whoever contravenes any of the provisions of this Act or any rules made thereunder shall be deemed to be guilty of committing an offence under this Act and shall be dealt with in accordance with the procedure laid down in this Chapter.

Establishment  
of Fast Track  
Courts.

28B. (1) For the purpose of providing speedy trial of offences, the appropriate Government shall establish such number of Fast Track Courts to deal exclusively with the matters arising out of offences committed under this Act, as it may deem necessary.

(2) The Fast Track Courts under sub-clause (1) shall be established in consultation with the Chief Justice of the High Court concerned.

(3) The expenses incurred in establishing the Fast Track Courts and the administrative expenses of such courts, including all salaries, allowances and pensions payable to or in respect of persons serving in that office, shall be borne by the Central Government.

**28C.** An investigation into an offence committed under this Act and the filing of charge sheet in the Fast Track Court shall be completed within a period of sixty days from the date of filing of a complaint.

Investigation and filing of charge sheet to be completed within sixty days.

**28D.** The Fast Track Court shall complete the trial within a period of one hundred and twenty days from the date of filing of charge sheet in the court:

Fast Track Court to complete the trial within one hundred and twenty days.

Provided that where the trial cannot be completed within a period of one hundred and twenty days, the Fast Track Court shall record in writing the reasons therefor and complete the trial within a further period of not more than sixty days, or within such further periods not exceeding sixty days at a time, for reasons to be recorded in writing, but not exceeding a total period of one year.

**28E.** On and from the commencement of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Amendment Act, 2012, the jurisdiction, powers and authority in relation to offences committed under this Act shall be exercisable by a Fast Track Court established under this Chapter and no other Court except the High Court concerned and the Supreme Court shall have jurisdiction, powers or authority in relation to such offences.

Offences committed to be exercisable by a Fast Track Court.

**28F.** Every suit or other proceeding filed or initiated under this Act and pending before any other court, Tribunal or Authority immediately before the date of commencement of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Amendment Act, 2012 shall stand transferred on that date to the Fast Track Court of competent jurisdiction:

Transfer of cases to the Fast Track Court.

Provided that nothing contained in this section shall apply to a suit or other proceedings pending in the High Court or the Supreme Court, as the case may be."

## STATEMENT OF OBJECTS AND REASONS

The practice of female foeticide is prevalent in many parts of our country. According to estimates, foetal sex determination and selective abortion of female foetus has grown into a huge industry with doctors making at least Rs. 1,000 crore by conducting illegal sex-selection procedures in India. The 2001 census revealed a decrease in child sex ratio from 945 in 1991 to 927 in 2001. The latest census in 2011 shows that the child sex ratio has dropped to 914 females against 1000 male—the lowest since independence. Also, there is ample evidence to suggest that this practice of sex determination and female foeticide has grown among the upper and middle class of the society and has moved to cities and towns. An estimated 15 million girls were wiped out—simply not born—in India over the last decade due to sex selection and female foeticide. And not surprisingly, India ranks 113th out of 135 countries in the World Economic Forum's Global Gender Gap Index for 2011.

The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act was enacted in 1994 to prohibit sex selection, before or after conception, and for preventing the misuse of pre-natal diagnostic techniques for sex determination. However, ineffective implementation of this Act has led to minimum number of convictions and dented the fight against female foeticide. In 2001, seven years after legislation, the Supreme Court directed State Governments to enforce the provisions of the aforesaid Act effectively.

Therefore, it is necessary to establish Fast Track Courts to quickly and efficiently deliver justice and convict those who commit the horrendous crime of female foeticide.

Hence this Bill.

NEW DELHI;  
May 8, 2012

BAIJAYANT PANDA

## FINANCIAL MEMORANDUM

Clause 6 of the Bill provides for establishment of Fast Track Courts to deal exclusively with matters arising under the Act. All expenditure in respect of Fast Track Courts shall be met out of the Consolidated Fund of India.

It is estimated that a sum of rupees twelve crore will be required as recurring expenditure per annum. A non-recurring expenditure of about rupees one hundred crore is also likely to be involved.

**BILL NO. 86 OF 2011**

**A Bill to provide for establishment of a Tourism Promotion Corporation of India to promote and develop tourism in the country and for matters connected therewith.**

**BE it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—**

- 1. (1) This Act may be called the Tourism Promotion Corporation of India Act, 2011.**
- (2) It extends to the whole of India.**
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.**

**Short title,  
extent and  
commencement.**

## Definitions.

2. In this Act, unless the context otherwise requires,—

(i) "appropriate Government" means in relation to a State, the Government of that State and in all other cases, the Central Government;

(ii) "Director-General" means the Director-General of Tourism Promotion Corporation of India established under section 4;

(iii) "prescribed" means prescribed by rules made under this Act; and

(iv) "tourist centre" means a centre declared as a tourist centre by the appropriate Government.

Tourism  
Promotion  
Corporation  
of India.

3. (1) The Central Government shall establish a Corporation to be known as the Tourism Promotion Corporation of India with its headquarters at New Delhi.

(2) The Corporation shall have its office in the capital city of each State and Union territory:

Provided that the Corporation may also set up its offices at any tourist centre or other places with the prior approval of the Central Government.

Corporation  
to be headed  
by Director-  
General.

4. (1) The Corporation shall be headed by a Director-General to be appointed by the Central Government.

(2) Each office of the Corporation shall be headed by a Director who shall be appointed by the Central Government in such manner as may be prescribed.

(3) The Central Government shall provide such number of officers and other staff as may be required for efficient functioning of the Corporation and its Branches.

Functions of  
the  
Corporation.

5. The Corporation shall perform the following functions:—

(i) formulation of a tourism policy in consultation with the State Governments;

(ii) giving wide publicity to its policies and programmes through all means of communication including print and electronic media;

(iii) advising Central Government with regard to financial assistance to be provided to State Governments for creating/improving infrastructure at all tourist centres;

(iv) providing better connectivity to all places of tourist importance by way of creation of adequate infrastructure;

(v) setting up tourist facilitation centres at all airports and railway stations with a view to facilitate travelling, boarding and lodging for the tourists including reservation in air services, trains, buses, hotels and motels;

(vi) conducting organised tours to different tourist centres;

(vii) setting up of hotels, restaurants and motels at all tourist centres with a view to catering to the needs of different categories of tourists;

(viii) preparing a list of paying-guest accommodation available at places having inadequate hotel or motel accommodation;

(ix) make arrangements for provision of adequate paying-guest accommodation for tourists at tourist centres having no hotels run by the Corporation;

(x) organising cultural functions in cooperation with the appropriate Government and other organisations concerned at various tourist places at regular intervals with a view to creating awareness among the general public and foreign tourists about the Indian culture and tradition;

(xi) organising cultural functions in various countries in co-ordination with Indian Embassies/High Commissions in those countries with a view to depicting Indian culture and tradition;



(xii) sending experts in the fields of art, music and such other activities as it may deem fit, to various countries for participating in programmes aimed at depicting Indian culture;

(xiii) training tourist guides and tour operators regarding historical background of tourist centres and courtesies to be extended to tourists, especially foreign tourists;

(xiv) setting up of health resorts based on Indian system of medicine at various tourist places in consultation with the appropriate Government;

(xv) making arrangements for security of foreign tourists at various tourist centres in consultation with the appropriate Government; and

(xvi) coordinating with the Archaeological Survey of India with a view to preserving and promoting monuments declared as of national importance.

6. The provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force, dealing with any of the matters dealt with in this Act. Act not to be in derogation of other laws.

7. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purpose of this Act. Power to make rules.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both the Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

## STATEMENT OF OBJECTS AND REASONS

India is a large country having vast tourism potential. However, it has not been exploited fully to the advantage of the country. Every year, close to 20 million foreign tourists visit our country from all over the world, while the volume of domestic tourists is about 740 million.

It is a known fact that the foreign tourists face hardship and suffer unpleasant experiences while they travel in our country. They get cheated by middlemen, touts and others for arranging reservations for journey, hotels, etc. Many of them carry a bad impression about our country on their return. As a result, prospective tourists are discouraged from visiting our country. Consequently there is a heavy loss of foreign exchange to the country.

India is a vast country having different cultures and traditions and various languages. People of one region are not aware of culture and tradition of people belonging to the other regions. As such they face a lot of difficulties while visiting important tourist places. Moreover, the tourist centres in many places require adequate facilities and the States are not in a position to spend the money. Security to foreign tourists also has to be taken into consideration. Therefore, it is proposed to set up a Tourism Promotion Corporation of India with a view to promote tourism in the country and attract foreign tourists in large numbers. It is also proposed to provide that the Corporation shall function with a professional approach in order to promote tourism.

Hence this Bill.

NEW DELHI;  
September 8, 2011.

NISHIKANT DUBEY

## FINANCIAL MEMORANDUM

Clause 3 of the Bill provides that the Central Government shall set up a Corporation to be known as the Tourism Promotion Corporation of India with its headquarters at New Delhi and an office in each State and Union territory. Clause 4 provides that the Corporation shall consist of a Director-General, a number of Directors and Officers. Clause 5 provides that the Corporation shall perform various functions such as providing connectivity to tourist places, giving publicity to its policies and programmes, setting up of hotels, motels and restaurants, organizing functions in the country and abroad to promote Indian culture, conduct tours and training for tourist guides, etc. to augment infrastructural and other facilities for tourists in all tourist places.

The Bill, therefore, if enacted, is likely to involve expenditure from the Consolidated Fund of India. It is likely to involve an annual recurring expenditure of rupees one thousand crore from the Consolidated Fund of India.

A non-recurring expenditure of rupees five thousand crore is also likely to be involved.

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**MEMORANDUM REGARDING DELEGATED LEGISLATION**

Clause 7 of the Bill empowers the Central Government to make rules for carrying out the purposes of the Bill. As the rules will relate to matters of detail only, the delegation of legislative power is of a normal character.

## BILL NO. 87 OF 2011

A Bill to provide for payment of guaranteed minimum pension to all pensioners including those who have worked in unorganized and private sector in the country and for matters connected therewith.

BE it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

Short title,  
extent,  
commencement  
and  
application.

1. (1) This Act may be called the National Minimum Pension (Guarantee) Act, 2011.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint but which shall not be later than three months from the date of assent.

(4) This Act shall also apply to persons retired from employment in unorganized and private sector.

Definitions.

2. In this Act, unless the context otherwise requires,—

(i) “Board” means the National Pension Board constituted under section 3;

(ii) "Fund" means the National Pension Fund constituted under section 5;

(iii) "pensioner" means any person who has served in any office or any public sector enterprise or any other statutory agency set up by a State Government and is getting pension by virtue of service rendered by him; and

(iv) "prescribed" means prescribed by rules made under this Act.

3. (1) The Central Government shall constitute a Board to be known as the National Pension Board.

National  
Pension  
Board.

(2) The Board shall consist of:—

(a) a retired judge of the Supreme Court or of a High Court, as the case may be, to be appointed by the Central Government, as Chairman;

(b) the Secretary to the Government of India in-charge of the Ministry of Labour and Employment, shall be the Member Secretary of the Board, *ex-officio*;

(c) the Secretary to the Government of India in-charge of the Ministry of Finance, as member;

(d) three members representing major trade unions, to be nominated by the Central Government, in such manner as may be prescribed;

(e) two members representing Public Sector Enterprises, to be nominated by the Central Government in such manner as may be prescribed;

(f) three members representing private sector and unorganized sector pensioners to be nominated by the Central Government in such manner as may be prescribed;

(g) five members of Parliament of which three shall be from Lok Sabha and two from Rajya Sabha, who shall be nominated by Presiding Officers of the respective Houses; and

(h) one member who shall be an eminent economist, to be nominated by the Central Government in such manner as may be prescribed.

(3) The salary and allowances payable to, and other terms and conditions of service of the Chairman and other Members of the Board, shall be such as may be prescribed by the Central Government.

(4) The Central Government shall provide to the Board such number of officers and other employees as it thinks fit for the efficient functioning of the Board.

Officers and  
Employees of  
the Board.

4. The Board shall perform the following functions,—

Functions of  
the National  
Pension  
Board.

(i) to maintain the record of such persons who have retired from employment from unorganized or private sector and who have attained the age of sixty years and not getting the minimum pension under this Act;

(ii) to pay such pensioners who are getting less than rupees five thousand as monthly pension, the difference of the amount in such manner as may be prescribed;

(iii) to lay down such guidelines as it may deem fit with regard to payment of minimum pension;

(iv) to administer the Fund; and

(v) to perform such other functions with regard to the pensioners as may be assigned to it by the Central Government.

5. Notwithstanding anything contained in any other law for the time being in force, the minimum pension of a person who has served in any office or undertaking or authority or establishment under the control of the Central Government shall be rupees five thousand per month.

Fixation of  
minimum  
monthly  
pension.

National  
Pension Fund.

6. (1) The Central Government shall constitute a fund to be known as the National Pension Fund with a corpus of rupees fifty thousand crore.

(2) The Central Government, the State Governments and the employers in the unorganized and private sector shall contribute to the Fund in such ratio as may be prescribed.

(3) Such other sums as may be received by way of donation, contribution or assistance from individuals, organisations or otherwise shall also be credited to the Fund.

Release of  
funds.

7. The Central Government shall, after due appropriation by the Parliament, release the necessary funds to the National Pension Board for effective implementation of the Act.

Annual report  
to be placed  
before  
Parliament.

8. The Central Government shall cause to be placed before both Houses of Parliament an annual report giving full account of the activities and performance of the Board.

Power to  
make rules.

9. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) Every rule made under this Act shall be laid as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both the Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

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### STATEMENT OF OBJECTS AND REASONS

The condition of a large number of pensioners in India is miserable, sad and frustrating. They deserve a more decent treatment from the society. They are pensioners because they served the society once.

It is, therefore, the responsibility of the society to treat them with respect and try to solve this problems to the extent possible.

This Bill seeks to provide for payment of minimum pension to every pensioner including those who have worked in unorganized sector and private sector. Since the provision of minimum pension is also being extended to persons who have worked in unorganized sector and private sector, it will provide social security for a substantial chunk of the population. Though it would not solve all the problems of the pensioners, it would provide them some kind of relief. It would also give them a sense of satisfaction that their problem got a sympathetic consideration.

Hence this Bill.

NEW DELHI;  
September 8, 2011

NISHIKANT DUBEY

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### FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for constitution of a National Pension Board. Clause 4 provides that the Board shall ensure that every pensioner is paid a minimum pension under the provisions of the Act. Clause 6 provides for constitution of a National Pension Fund. Clause 7 provides for release of funds to the National Pension Board by the Central Government. The Bill, therefore, if enacted, would involve expenditure from the Consolidated Fund of India. It is estimated that a recurring expenditure of rupees thirty thousand crore will be involved per annum.

A non-recurring expenditure of rupees fifty thousand crore is also likely to be involved.

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### MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 9 of the Bill empowers the Central Government to make rules for carrying out the purposes of the Bill.

As the rules will relate to matters of detail only, the delegation of legislative power is of a normal character.

## BILL NO. 95 OF 2011

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Constitution (Amendment) Act, 2011.

Amendment  
of the Eighth  
Schedule.

2. In the Eighth Schedule to the Constitution,—

(i) entries 3 to 6 shall be renumbered as entries 4 to 7, respectively, and before entry 4 as so renumbered, the following entry shall be inserted, namely:—

"3. Bhojpuri.";



(ii) after entry 7 as so renumbered, the following entry shall be inserted, namely:—

"8. Ho.";

(iii) entries 7 to 14 shall be renumbered as entries 9 to 16, respectively, and after entry 16 as so renumbered, the following entry shall be inserted, namely:—

"17. Oraon.";

(iv) entries 15 to 21 shall be renumbered as entries 18 to 24, respectively, and after entry 24 as so renumbered, the following entry shall be inserted, namely:—

"25. Tulu.";

(v) entry 22 shall be renumbered as entry 26.

## STATEMENT OF OBJECTS AND REASONS

The Eighth Schedule to the Constitution includes twenty-two languages as national languages which are widely spoken and written by our people. It is presumed that it is around these languages that the education, culture and intellectual pursuits of our people grow and flourish.

But it is unfortunate that the "Bhojpuri" language, which is spoken and written by millions of people does not find a place in the Eighth Schedule. Bhojpuri is the mother tongue of a large number of people in several parts of Bihar, Jharkhand and Eastern Uttar Pradesh and is spoken in other parts of the world too.

Similarly *Oraon* is a popular language of Jharkhand which is spoken not only in that State but also in West Bengal, Orissa and Chhattisgarh by millions of tribal people. This language has a rich tradition dating back to thousands of years. Similarly, *Ho* is one of the languages of Santhali people of Jharkhand whereas *Tulu* is spoken by a large number of people in Udupi and South Canara Districts of Karnataka. All of these languages fulfil all the criteria for inclusion in the Eighth Schedule to the Constitution.

For the promotion of literacy and the development of these languages, it is necessary that they are included in the Eighth Schedule to the Constitution.

Hence this Bill.

NEW DELHI;  
November 9, 2011

AJAY KUMAR

## BILL NO. 111 OF 2011

A Bill to provide for health insurance for the benefit of persons living below poverty line and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Health Insurance (For Persons Living Below Poverty Line) Act, 2011.

Short title,  
extent and  
commencement.

(2) It extends to the whole of India.

(3) It shall come into force at once.

Definitions.

2. In this Act, unless the context otherwise requires,—

(i) "persons living below poverty line" means persons, whose annual income from all sources is less than rupees fifty thousand; and

(ii) "prescribed" means prescribed by rules made under this Act.

Health Insurance Scheme.

3. The Central Government shall frame a health insurance scheme for persons living below poverty line.

Health cards to persons living below poverty line.

4. (1) The Central Government shall, through the State Government or the Union territory Administration, as the case may be, issue a health card to every citizen living below poverty line.

(2) The health card shall contain the details such as name and age, address details of family members, annual income and such other information as may be prescribed.

Citizens to approach District Administration if card is not issued to them.

5. Any citizen, who is entitled to a health card but has not been issued the same, he may approach the district administration, which shall, after necessary verification, issue the health card.

Right of health cardholders to get treatment from hospitals.

6. (1) Any person, who has been issued a health card, may approach any hospital, including a privately run hospital for treatment of self or any of his family members, whose name has been included in the health card.

(2) The hospital shall not charge any fees from the cardholder for his treatment or treatment of any member of his family and shall also provide the prescribed medicines free of charge.

(3) The hospital shall make entries in the health card regarding the total expenditure incurred by it in the treatment of the cardholder or his family members and send a copy of the detailed expenses to the Central Government in such manner as may be prescribed.

Limit of expenditure on the treatment of cardholders.

7. The total expenditure on the treatment in respect of a health cardholder and his family members shall not exceed rupees twenty-five thousand per year:

Provided that the cardholder may submit an application in the form as may be prescribed to the Central Government for enhancing the limit in case of any critical illness and the Central Government may allow an enhanced expenditure for the treatment of the particular disease.

Hospitals not to refuse treatment to cardholders.

8. Subject to the provisions of section 7, no hospital shall refuse treatment of any cardholder, on the ground that the cardholder has not made any advance deposit with the hospital for treatment.

Procedure for reimbursement.

9. The hospital shall make its claim for reimbursement of expenses in connection with treatment of a cardholder or a member of his family to the Central Government in such manner as may be prescribed.

Reimbursement to be made within a month.

10. The Central Government on receipt of a claim under section 9 shall process the same and reimburse the expenses within a month of receipt of the claim to the hospital concerned.

Life insurance for nominee of the cardholder.

11. (1) Every cardholder shall be insured for a sum of rupees twenty-five thousand.

(2) The amount of insurance shall be paid to a nominee of the cardholder in case of his death.

(3) The premium for insurance of the cardholder shall be paid by the Central Government.

12. If any hospital refuses to treat any cardholder or member of his family without any valid reason, the Central Government shall issue directions for cancellation of the licence of the hospital. Penalty for violation.

13. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of the Act. Power to make rules.

(2) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both the Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

### STATEMENT OF OBJECTS AND REASONS

Poor people cannot afford treatment in hospitals as it has become a costly affair. Huge crowds in Government hospitals discourage elderly, physically challenged persons and women from taking treatment there. As a result, they are left uncared for. Even in Government hospitals, they have to spend money on purchasing medicines, etc.

India, being a welfare State, care has to be taken by the Government of the under privileged sections of the society. It is proposed to provide that persons living below poverty line will be allowed to take free treatment in hospitals including private hospitals and there is also a provision for their life insurance.

This, it is hoped, will mitigate the hardship of the poor people to some extent.

Hence this Bill.

NEW DELHI;  
November 9, 2011.

AJAY KUMAR

### FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for a health insurance scheme for all persons living below poverty line. Clause 4 provides for issuance of health cards to all persons living below poverty line to enable them to take treatment in hospitals. Clause 10 provides for reimbursement of expenses by the Central Government to the hospitals concerned. There is also a provision for life insurance of the cardholder under clause 11.

The Bill, therefore, if enacted, would involve expenditure from the Consolidated Fund of India. It is likely to involve a recurring expenditure of about rupees five thousand crore per annum.

A non-recurring expenditure of about rupees one thousand crore will also be involved for issuing health cards.

### MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 13 of the Bill empowers the Central Government to make rules for carrying out the purposes of the Bill.

As the rules will relate to matters of detail only, the delegation of legislative power is of a normal character.

## BILL NO. 118 OF 2011

A Bill further to amend the Environment Protection Act, 1986.

BE it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Environment Protection (Amendment) Act, 2011.

Short title and extent.

(2) It extends to the whole of India.

29 of 1986.

2. After Chapter III of the Environment Protection Act, 1986, the following Chapter and sections thereunder shall be inserted, namely:—

Insertion of new Chapter IIIA.

“CHAPTER IIIA

SAFEGUARDING OF RIVERS

17A. Notwithstanding anything contained in any other Act, or rule or order for the time being in force, no person shall carry on any industry or operation or work, which causes pollution in any form to a river within a distance of one hundred metres from any river:

No person to carry on any industry or operation within one hundred metres from any river.

Provided that water treatment plants may be set up by the Central Government or a State Government as the case may be, for the purpose of supplying drinking water and for the purpose of treating sewage water before discharging it in the river.

No person to excavate sand within a distance of fifty metres from riverbank.

**17B.** Notwithstanding anything contained in any other Act, or rule or order for the time being in force, no person shall excavate sand from the riverbanks within a distance of fifty metres from the riverbank.

*Explanation.*—For the purpose of this Chapter, person includes a company registered under the Companies Act, 1956.”.

1 of 1956.



## STATEMENT OF OBJECTS AND REASONS

Despite enactment of the Environment Protection Act, 1986, exploitation of our natural resources are on the rampant. The pollution of rivers is on the rise. Already with the ever increasing population, we are unable to provide facilities like drinking water from the depleting water levels in the rivers.

Moreover with the lifting of sand from riverbanks, rivers are losing their foreshore and erosion has been intensified. Therefore, a distance limit should be prescribed to prohibit handling of sand from the riverbanks in order to protect our natural resources and rivers.

Hence this Bill.

NEW DELHI;  
November 9, 2011.

A.T. NANA PATIL

## BILL NO. 2 OF 2012

A Bill further to amend the Consumer Protection Act, 1986.

BE it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:—

Short title and  
commencement.

1. (1) This Act may be called the Consumer Protection (Amendment) Act, 2012.

(2) It shall come into force with immediate effect.

Amendment of  
section 16.

2. In section 16 of the Consumer Protection Act, 1986,—

68 of 1986.

(i) in clause (b) of sub-section (1), in the *Explanation* to the first proviso, after the words “or any tribunal at equivalent level:”, the words “or persons having ten years of continuous service as member of a District forum:” shall be added; and

(ii) in sub-section (3), in the first proviso, for the words “eligible for re-appointment for another term of five years or up to the age of sixty-seven years, whichever is earlier,” the words “eligible for re-appointment up to the age of sixty-seven years,” shall be substituted.

## STATEMENT OF OBJECTS AND REASONS

The objective behind enactment of the Consumer Protection Act, 1986 was to provide better protection to the interests of consumers, in relation to price, quality, quantity, purity and standard of consumer goods.

For this purpose, the Act envisages Consumer Protection Councils at the State and Central level and Consumer Disputes Redressal Forum at district level. Section 16 of the Act allows constitution of the State Commission consisting of President and two members. Section 16(3) deals with eligibility criteria for appointment and re-appointment of members and provides that a member can be re-appointed for only once.

The members of the State Commission, after rendering five or ten years of service, gain immense experience and expertise on the various aspects of the Consumer Protection Act, 1986 and after rendering such service they are in a better position to contribute towards achieving the objectives of the Act. They may also contribute immensely for the speedy disposal of cases, since the Act envisages disposal of cases within ninety days. If one looks at existing scenario, members are in extremely difficult condition, due to piling up of cases and constant appointment of fresh persons as members and also in view of taking time by them in understanding the nuances of the Act, to achieve the goals of the Act. There is no doubt that members of the State Commission with five years of experience are an asset to the Commission and ensure that the Act is implemented in its true spirit. But, if one looks at their career, it comes to a standstill the moment they come out of the Commission, since Act allows for re-appointment only once. After rendering ten years of service, they can neither be appointed for another term nor their service is treated as judicial experience. As a result, they are not considered for appointment as judges or members of other tribunals or Commissions.

In view of the above, it is proposed to allow the members to remove the restriction of terms and the service rendered by them to be treated as judicial experience or judicial service and they be treated at par with judicial officers for their career progression and recognition of their service and taking maximum out of their potential for the benefit of consumers.

Hence this Bill.

NEW DELHI;  
November 9, 2011.

L. RAJAGOPAL

## BILL NO. 13 OF 2012

A Bill further to amend the Constitution of India

BE it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Constitution (Amendment) Act, 2012.

Amendment  
of article 85.

2. In article 85 of the Constitution, in clause (1), the following proviso shall be added at the end, namely:—

"Provided that the number of sittings of each House of Parliament in all sessions in a calendar year shall not be less than one hundred and thirty days."

Amendment  
of article 100.

3. In article 100 of the Constitution, in clause (3), for the words "one-tenth" the words "one-third" shall be substituted.

## STATEMENT OF OBJECTS AND REASONS

Article 100 of the Constitution provides, *inter-alia*, that the quorum to constitute a meeting of either House of Parliament shall be one-tenth of the total number of members of the House. At present, the number of members to be present in Lok Sabha to constitute quorum is fifty-five including the Chairperson. However, it has been observed that on several occasions, the required minimum number of members is not present in the House even when some serious issue is being discussed. This trend is disheartening and will erode public trust in the institution.

The low attendance of members in the House also creates an impression in the minds of general public that members do not discuss the issues in all its seriousness. Sometimes, the proceedings of the House continue without quorum as no member raises the question of quorum in such situation. Therefore, there is an urgent need to amend the Constitution with a view to increase the minimum number of members in the House that constitutes a quorum from one-tenth to one-third of the total membership of the House so that attendance of minimum required number of members in the House can be ensured till the time the House is adjourned for the day. The falling number of sittings of the House in a calendar year is also a matter of concern and requires to be mentioned clearly in the Constitution. The Bill seeks to amend the Constitution with a view to —

(i) increase the minimum number of members in the House that constitutes a quorum from one-tenth to one-third of the total membership of the House; and

(ii) provide that the number of sittings of each House of Parliament in all sessions in a calendar year shall be not less than one hundred and thirty days.

Hence this Bill.

NEW DELHI;  
February 23, 2012.

RAJAN SUSHANT

## BILL NO. 49 OF 2012

A Bill further to amend the Food Safety and Standards Act, 2006.

BE it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:—

Short title and  
commencement.

1. (1) This Act may be called the Food Safety and Standards (Amendment) Act, 2012.

(2) It shall come into force on such date, as the Central Government may, by notification in the Official Gazette, appoint.

Insertion of  
new sections  
59A and 59B.

2. After section 59 of the Food Safety and Standards Act, 2006, the following sections shall be inserted, namely:—

34 of 2006.

Special Penal  
Provision for  
manufacturing,  
distributing and  
selling of  
synthetic milk.

“59A. (1) Notwithstanding anything contained in this Act, any person who, whether by himself or by any other person on his behalf, manufactures, distributes or sells synthetic milk shall be punished with imprisonment for a term which shall not be less than five years but which may extend to ten years and also with fine which may extend to five lakh rupees or with both.

(2) If any person, after having been previously convicted of an offence punishable under sub-section (1), subsequently commits and is convicted of the same offence, he shall be punished with death.

(3) Where an offence under sub-section (1) is committed by any person acting as the agent or servant of another person, or being otherwise subject to the supervision or instructions of another person for the purposes of any employment in the course of which the offence was committed, that other person shall, without prejudice to the liability of first mentioned person, be liable under this section in the same manner and to the same extent as if he had personally committed the offence if it is proved that the act which constituted the offence was committed with his consent or connivance or that it was attributable to any neglect on his part.

(4) Where an offence under sub-section (1) committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any Director, Manager, Secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

*Explanation.*—For the purpose of this section, “synthetic milk” means milk in liquid or powder form manufactured by mixing detergent powder, urea, edible oils, fats, whitening material or any other materials which is toxic for human consumption.

59B. Notwithstanding anything in this Act or the Code of Criminal Procedure, 1973, an offence committed under section 59A shall be cognizable and non-bailable.

## STATEMENT OF OBJECTS AND REASONS

These days print media is full of reports about large scale sale of synthetic milk in various parts of the country particularly in the States of Uttar Pradesh, Rajasthan, Haryana, Gujarat and even in the National Capital Territory of Delhi. The synthetic milk is generally produced from detergents, edible oils, fats, urea etc. and mixed with small quantity of natural milk and then passed on to the unsuspecting consumers as natural milk. This has endangered the health particularly those of the children because consumption of synthetic milk can lead to various dreaded diseases including cancer and kidney or lung failure. This business has become so lucrative that people have started producing it on a very large scale. Even some reputed milk companies are involved in this for making quick money. The Central Government and the State Governments are unable to cope with this menace in the absence of any stringent law to check it. It is felt that deterrent punishment has to be provided for those who are passing on this poison in the form of synthetic milk to unsuspecting consumers.

Even though the Food Safety and Standards Act, 2006 has been passed with a view to prevent adulteration of food items which includes milk, the punishment provided for in the Act is not deterrent for those who indulge in adulteration of milk with toxic materials which in some cases result in death of unsuspecting consumers.

Therefore, it is proposed in the Bill to make the punishment more stringent so that it acts as a deterrent.

NEW DELHI;  
March 5, 2012.

MAHENDRASINH P. CHAUHAN



## BILL NO. 40 OF 2012

A Bill to provide for the establishment of a rural labour welfare fund for the welfare of the rural labour employed in the agriculture and other rural occupations and for matters connected therewith.

BE it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Rural Labour Welfare Fund Act, 2012.

Short title,  
extent and  
commence-  
ment.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) "employer" means the cultivator, orchard owner, poultry farm owner, agency, society including cooperative society or any establishment in a rural area which employs rural labour;

(b) "Fund" means the Rural Labour Welfare Fund established under section 3;

(c) "prescribed" means prescribed by rules made under this Act; and

(d) "rural labour" means any person engaged in agriculture, sericulture, poultry, horticulture, handicrafts or any related occupation in rural areas as a wage earner, whether in cash or kind, for his livelihood and includes a person engaged through a contractor or engaged as a self-employed person.

Establishment  
of Fund.

3. (1) With effect from such date, as the Central Government may, by notification in the Official Gazette, specify in this behalf, there shall be constituted for the purposes of this Act, a Fund to be called the Rural Labour Welfare Fund.

(2) The Central Government shall after due appropriation made by Parliament in this behalf, credit to the Fund in each financial year such sums of money as it considers necessary for carrying out the purposes of this Act.

Utilisation of  
Fund.

4. The Fund shall be utilized by the Central Government to meet the expenditure in connection with measures which in the opinion of the Central Government, after consulting the Governments of the States and Union territories Administrations, are necessary or expedient to promote the welfare of the rural labour and in particular:—

(a) to defray the cost of measures to be carried out for the benefit of rural labour towards—

(i) providing water supply for drinking and other purposes;

(ii) providing educational facilities;

(iii) the improvement of standard of living and nutrition;

(iv) amelioration of the social conditions;

(v) providing housing and recreational facilities;

(vi) rendering financial assistance in case of infirmity or disability due to accident, old age, or any other reason; and

(vii) providing such other welfare measures as may be prescribed.

(b) to grant loan, assistance or subsidy to Government of any State, Union territory Administration, local authority or any organisation for any scheme approved by the Central Government for the purposes connected with the welfare of rural labour;

(c) to pay annually grant-in-aid to Government of any State or Union territory Administration, local authority or an employer or any other organisation which provides to the satisfaction of the Central Government such welfare measures and facilities of the prescribed standard for the benefit of rural labour;

(d) to meet the cost of administering the Fund; and

(e) any other expenditure which the Central Government may direct to be defrayed from the Fund.

State Advisory  
Committees.

5. (1) The Central Government may constitute as many Advisory Committees as it deems fit to advise the Central Government on such matters arising out of the implementation of the provisions of this Act:

Provided that at least one Advisory Committee for each State and Union territory shall be constituted by the Central Government in consultation with the respective State Government and Union territory Administration.

(2) The Chairman and such number of other members as may be prescribed, of each Advisory Committee shall be appointed by the Central Government.

(3) The term of office and other conditions of service of the Chairman and other members shall be such as may be prescribed.

6. (1) The Central Government shall constitute a Central Advisory Committee to coordinate the work of the Advisory Committees constituted under section 5 and to advise the Central Government on any matter arising out of the implementation of provisions of this Act.

Central  
Advisory  
Committee.

(2) The Chairman and such number of other members, as may be prescribed, of the Central Advisory Committee shall be appointed by the Central Government.

(3) The term of office and other conditions of service of the Chairman and other members shall be such as may be prescribed.

7. (1) The Central Government may appoint as many Rural Labour Welfare Fund Commissioners, Inspectors and such other officers and staff as it deems necessary for carrying out the purposes of this Act.

Appointment  
of  
Commissioners,  
inspectors  
and other  
officers.

45 of 1860. (2) Every person appointed under this section shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860.

(3) Any officer or inspector appointed under this Act, may,—

(a) with such assistance, if any, as he may deem fit, inspect at any reasonable time any place which he considers necessary for carrying out the purposes of this Act;

(b) do within such place anything necessary for the proper discharge of his duties; and

(c) exercise such other powers as may be prescribed.

8. The Central Government may require a State Government or a Union territory Administration or a local authority or an employer to furnish for the purposes of this Act, such statistical and other information in such form and within such period as may be prescribed.

State  
Government  
to furnish  
requisite  
information.

9. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

Power to  
make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for,—

(a) the manner in which the fund may be applied;

(b) the conditions governing the grant of loans or subsidy;

(c) the conditions governing grant-in-aid;

(d) the standard of welfare measures and facilities to be provided out of the fund;

(e) the composition of the Advisory Committees and Central Advisory Committee constituted under sections 5 and 6 respectively and the manner in which the members thereof shall be appointed;

(f) the term of office of such members, the allowances, if any, payable to them and the manner in which the Advisory Committee and the Central Advisory Committee shall conduct their business;

(g) the recruitment, conditions of service and duties of all persons appointed under section 7; and

(h) the powers that may be exercised by an officer or inspector appointed under section 7.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both the Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

### STATEMENT OF OBJECTS AND REASONS

India resides in villages and eighty-five per cent. of its rural population earns its livelihood from agriculture. There are cultivators, orchard owners, poultry owners, agricultural workers and home based workers in the rural areas. Their number runs into crores. However, their wages and income are meagre and many of them do not get employment throughout the year. These rural labourers also become an easy prey to the debt trap of the landlords and moneylenders who force them to become bonded labourers. Most of them remain very poor throughout their lives and live in distress for generations. In a welfare State like ours, there are no welfare schemes or funds for these helpless rural labourers whereas in the industrial sector there are Labour Welfare Boards and cess is levied and collected through legislative measures in order to provide them various amenities including housing, education and medical care. But the rural labourers are unorganized, poverty stricken and neglected, even by the State.

It is, therefore, necessary that the deteriorating plight of rural workers be felt at national level and the Central Government should establish a Rural Labour Welfare Fund for financing adequately and systematically the welfare measures to be carried out for the rural and agricultural labour throughout the country so as to achieve the goals of a welfare State in its true sense.

Hence this Bill.

NEW DELHI;  
March 19, 2012.

MAHENDRASINH P. CHAUHAN

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### FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for the establishment of the Rural Labour Welfare Fund. Clause 5 provides for the constitution of Advisory Committees. Clause 6 provides for constitution of a Central Advisory Committee. Clause 7 provides for appointment of Rural Labour Welfare Commissioners, Inspectors and officers and staff for carrying out the purposes of this Bill. The Bill, therefore, if enacted, will involve expenditure from the Consolidated Fund of India but it is not possible at this stage to give the precise details of the expenditure that would be involved. It is, however, estimated that it will involve a recurring expenditure of about rupees two hundred crore per annum.

It will also involve a non-recurring expenditure of about rupees sixty lakh.

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### MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 9 of the Bill provides that the Central Government may make rules for carrying out the purposes of this Bill. The delegation of legislative power will relate to matters of detail only and is of a normal character.

## BILL NO. 36 OF 2012

A Bill further to amend the Constitution (Scheduled Castes) Order, 1950.

BE it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Constitution (Scheduled Castes) Order (Amendment) Act, 2012.

Amendment  
of the  
Schedule.

2. In the Schedule to the Constitution (Scheduled Castes) Order, 1950, in PART VIA.— C.O. 19  
*Jharkhand*,—

(i) after entry 7, the following entry shall be inserted, namely:—

"7A. Dandachhatra Majhi"; and

(ii) after entry 16, the following entry shall be inserted, namely:—

"16A. Mal, Malla Kshatriya".

## STATEMENT OF OBJECTS AND REASONS

Jharkhand is predominantly a tribal State. However, it has also a number of castes which are equally backward in all respects. There are a large number of people belonging to Mal, Malla Kshatriya and Dandachhatra Majhi castes who are living in the State but have not yet been included in the list of Scheduled Castes of the State of Jharkhand even though their social and economic condition is worse than many other castes which are included in the list of Scheduled Castes. The people belonging to these communities are getting the benefits of reservation in the States of Orissa and West Bengal and they ought to be given the reservation benefit in Jharkhand also. The State Government of Jharkhand submitted request to the Central Government for inclusion of these communities in the list of Scheduled Castes way back in the year 2005 but the Central Government have not taken any action so far despite the fact that these castes fulfil all the criteria required for inclusion in the list of Scheduled Castes.

Therefore, these castes, namely 'Mal, Malla Kshatriya and Dandachhatra Majhi' deserve to be included in the Constitution (Scheduled Castes) Order, 1950 in respect of the State of Jharkhand.

The Bill seeks to achieve the above objective.

NEW DELHI;  
March 27, 2012.

AJAY KUMAR

## FINANCIAL MEMORANDUM

Clause 2 of the Bill provides for including the persons belonging to Mal, Malla Kshatriya and Dandachhatra Majhi castes in the list of Scheduled Castes in respect of State of Jharkhand. The Bill, therefore, if enacted, will involve expenditure from the Consolidated Fund of India. It is estimated that a recurring expenditure of about rupees ten crore per annum will be involved.

No non-recurring expenditure is likely to be involved.

## BILL NO. 64 OF 2012

A Bill further to amend the National Highways Act, 1956.

BE it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:—

Short title.

1. This Act may be called the National Highways (Amendment) Act, 2012.

Substitution  
of new  
section for  
section 5.

2. For section 5 of the National Highways Act, 1956, the following section shall be substituted, namely:— 48 of 1956.

Responsibility  
for  
development,  
maintenance  
and repairing  
of national  
highways and  
provision of  
certain  
facilities, etc.

"5. (1) Save as otherwise provided in this Act, it shall be the responsibility of the State Government—

(i) to develop, maintain and repair from time to time the portion of the national highways situated in that State subject to such conditions, if any, as the Central Government may, by notification in the Official Gazette, specify;

(ii) to provide and maintain public utility services such as drinking water facilities, toilets, urinals equipped with flush system and public telephone booths on national highways at such places within the State, as it may deem appropriate;



(iii) to provide ambulance services on national highways at such strategic locations within the State, as it may deem appropriate, for the purpose of facilitating immediate medical assistance to the victims of road accidents; and

(iv) to provide tow away services to any destination for accidental or breakdown vehicles on national highways situated within the State.

(2) The Central Government shall, after due appropriation made by Parliament in this behalf by law, provide requisite funds to the State Governments for the purposes of this section.

## STATEMENT OF OBJECTS AND REASONS

The National Highways and roads are not only essential for commuting from one place to another but in fact they are the lifelines of our economy. Most of essential commodities and industrial products are transported from one place to another through road transport. Thus roads and road transport system is an important cog in the wheel of our economy. But unfortunately the national highways and other such roads are in a pitiable condition. Potholes are visible everywhere which damage vehicles plying on them. Driving vehicles on such damaged roads lead to more consumption and wastage of fuel, which is already a scarce commodity, not only in our country but throughout the world. Thus, it is necessary to maintain and repair the highways and roads periodically to keep them in good condition.

It has also been observed that victims of road accidents, particularly on national highways, do not get timely medical assistance. If adequate ambulance service is provided on highways, victims can be shifted to the nearest medical centre or hospital in time and hence precious lives can be saved. Similarly, vehicles breaking down on roads cause traffic disruptions if they are not removed on time. In order to tow away such vehicles, crane service is necessary. Further, the public utility services like toilets, telephone booths, ATM, etc. have also become a necessity to be provided on roads and highways.

The National Highways Act, 1956 was enacted with a view to provide for the declaration of certain highways to be national highways and for matters connected therewith. However, there is no mention of certain facilities like drinking water, toilets, urinals, public telephone booths to be provided by the Government on national highways in this Act. Moreover, the State Government concerned should also play a role of partner in development, maintenance and repairing of national highways. Therefore, the Bill seeks to amend the National Highways Act, 1956 with a view to achieve aforesaid objectives.

Hence this Bill.

NEW DELHI;  
*April 13, 2012*

MAHENDRASINH P. CHAUHAN

## FINANCIAL MEMORANDUM

Clause 2 of the Bill provides for providing of certain facilities like drinking water, toilets, urinals, public telephone booths on national highways including development, maintenance and repairing of national highways. It also provides that the Central Government shall provide requisite funds to the State Governments for the purpose of providing aforesaid facilities on national highways. The Bill, therefore, if enacted, will involve expenditure from the Consolidated Fund of India. It is estimated that a sum of rupees one thousand crore is likely to involve as recurring expenditure per annum.

A sum of rupees ten crore is also likely to be involved as non-recurring expenditure.

## BILL NO. 65 OF 2012

*A Bill to prohibit glorification of consumption of alcoholic beverages in motion pictures in order to check adverse effects of consumption of alcohol on people, particularly on the younger generation, and for matters connected therewith or incidental thereto.*

BE it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Glorification of Alcoholic Beverages in Motion Pictures (Prohibition) Act, 2012.

Short title,  
extent and  
commence-  
ment.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) “alcoholic beverage” includes beer, wine or spirits;

(b) “motion picture” includes cinema, television serials, telefilms, dramatic performance or any visual display; and

(c) “prescribed” means prescribed by rules made under this Act.

Prohibition of glorification of consumption of alcoholic liquor.

3. (1) Notwithstanding anything contained in any other law for the time being in force, glorification of alcoholic beverages in motion pictures is hereby prohibited.

*Explanation.*— For the purposes of this section, the expression “glorification of alcoholic beverages” includes presentation of consumption of Alcoholic beverages as status symbol or a refreshing drink or a stimulant or an antidote to all kinds of worries, frustrations, tiredness, human sorrows or day-to-day problems.

(2) Whoever contravenes the provisions of sub-section (1) shall be guilty of an offence under this Act.

Penalty.

4. (1) Whoever commits an offence under this Act shall be punished with imprisonment for a term which may extend to three years and with fine which may extend to fifty thousand rupees.

(2) Where an offence under this Act is committed by a body Corporate or a department of a Government, any person who, at the time of the commission of the offence, was incharge of the body corporate or department of the Government, as the case may be, shall be deemed to be guilty of an offence unless he proves that the offence was committed without his knowledge or that he used all due diligence to prevent the commission of the offence.

Power to make rules.

5. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both the Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

### STATEMENT OF OBJECTS AND REASONS

Nowadays we find that in every movie, television serial, telefilm and even drama, consumption of alcoholic liquor is glorified to the maximum extent possible. Every character including the hero, heroine or the villain are shown taking liquor. If someone is tired or worried or happy, he is shown taking alcohol. In fact, on every occasion, alcohol is portrayed as an antidote to all kinds of sorrows, worries or even tiredness. Everyone is ready to prepare and offer a drink to others as if it is a refreshing tonic which relieves a person from all worries, sorrows and miseries. This glorification of liquor is unabated inspite of the fact that medical science has proved beyond doubt that consumption of liquor is very harmful to our health as it damages the liver and other vital organs of the body. After consuming liquor, a person no longer remains sensible and may commit worst crimes.

The glorification of consumption of liquor in movies and television programmes has started showing its impact on the society and consumption of liquor has become a status symbol in the society. It has become an essential component of the menu in parties, marriages and birthday celebrations and such other social gatherings. As a result, more and more people are becoming alcoholic, families are getting ruined and heinous crimes are being committed in the society.

Therefore, in order to get rid of this evil, the glorification of liquor in popular electronic media has to be prohibited which will have far reaching implications for our society. After all a beginning has to be done to cleanse the society.

Hence this Bill.

NEW DELHI;  
April 13, 2012.

MAHENDRASINH P. CHAUHAN

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### MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 5 of the Bill provides that the Central Government may make rules for carrying out the purposes of the Bill. The rules will relate to matters of administrative detail only.

The delegation of legislative power is, therefore, of a normal character.

## BILL NO. 67 OF 2012

A Bill to provide for certain welfare measures for petrol pump workers and for matters connected therewith.

BE it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:—

Short title and extent.

1. (1) This Act may be called the Petrol Pump Workers (Welfare) Act, 2012.
- (2) It extends to the whole of India.

Definitions.

2. In this Act, unless the context otherwise requires,—
  - (a) "Fund" means Petrol Pump Workers Welfare Fund established under section 3;
  - (b) "petrol pump" means an outlet selling petrol, diesel, Liquefied Natural Gas, Liquid Petroleum Gas or Compressed Natural Gas;

(c) "prescribed" means prescribed by rules made under this Act; and

(d) "worker" means any person who is engaged in any activity connected with the operation of petrol pump.

3. (1) The Central Government shall establish a Fund to be known as the Petrol Pump Workers Welfare Fund for the welfare of petrol pump workers in the country.

Establishment  
of Petrol  
Pump Workers  
Welfare Fund.

(2) The Central Government and every State Government/Union territory Administration shall contribute to the Fund in such ratio as may be prescribed.

(3) The owners of petrol pumps shall also contribute to the Fund in such proportion as may be prescribed by the Central Government.

4. The Fund shall be administered by a Committee consisting of :—

Administration  
of Petrol  
Pump Workers  
Welfare Fund.

(i) a Chairperson who shall be appointed by the Central Government;

(ii) one representative each from the States and Union territories to be nominated by the respective State Governments and Union territory Administration;

(iii) one member representing the workers who shall be nominated in such manner as may be prescribed; and

(iv) one member representing the owners of the petrol pump who shall be nominated in such manner as may be prescribed.

(v) The terms and conditions of the service of Chairperson and other members of the Committee shall be such as may be prescribed by the Central Government.

5. The Fund shall be used for the following purposes, namely:—

Utilisation of  
the Fund.

(i) providing free health facilities to the workers and their families;

(ii) providing free educational facilities to the children of workers;

(iii) payment of compensation to workers who are injured during the course of their duty;

(iv) payment of compensation to the next of the kin of workers who die in harness;

(v) payment of disability allowance to workers who are injured in accidents or contract ailments during the course of their duty and are not able to work;

(vi) payment of old age pension to those workers who have attained the age of sixty years; and

(vii) payment of family pension to the next of kin including minor children of deceased worker.

6. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of the Act.

Power to make  
rules.

(2) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both the Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

### STATEMENT OF OBJECTS AND REASONS

Lakhs of workers are engaged in the work related to distribution/supply of Petrol, Diesel, Liquefied Natural Gas, Liquid Petroleum Gas and Compressed Natural Gas, etc. throughout the country but they are not covered under any labour law. They are not paid even minimum wages which they deserve by virtue of their work. The condition of these workers is worse than the contract labourers. In the circumstances, provision of certain facilities to these workers during their service as well as in their old age is highly desirable.

Hence this Bill.

NEW DELHI;  
April 16, 2012.

ADHIR RANJAN CHOWDHURY

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### FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for the setting up of a Petrol Pump Workers Welfare Fund for the welfare of petrol pump workers in the country. It further provides that the Central Government shall also contribute to the Fund. Clause 4 provides for constitution of a Committee for administration of the Fund. The Bill, therefore, if enacted, will involve expenditure from the Consolidated Fund of India. It is likely to involve a recurring expenditure of rupees one hundred crore per annum.

A non-recurring expenditure of about rupees one hundred crore per annum is also likely to be involved.

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### MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 6 of the Bill empowers the Central Government to make rules for carrying on the purposes of the Bill. As the rules will relate to matters of detail only, the delegation of legislative power is of a normal character.



## BILL NO. 70 OF 2012

A Bill further to amend the Central Universities Act, 2009.

BE it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:—

1. This Act may be called the Central Universities (Amendment) Act, 2012.

Short title.

2. In the Central Universities Act, 2009, in section 3, after sub-section (5), the following sub-section shall be inserted, namely:—

Amendment of section 3.

"(5A) Notwithstanding anything in sub-section (5), the headquarter of the Central University of Bihar shall be at Motihari District of the State of Bihar."

## STATEMENT OF OBJECTS AND REASONS

The Central Universities Act, 2009 was enacted by Parliament to establish and incorporate universities for teaching and research in various States and to provide for matters connected therewith or incidental thereto. The aforesaid Act provides, *inter alia*, for the establishment of a Central University in the State of Bihar by the name of Central University of Bihar.

The democratically elected Government of the State of Bihar has expressed its desire that the location of the newly proposed university should be in the district of Motihari. Motihari is one of the most prominent cities of northern Bihar. It is the district headquarter of east Champaran district and is well connected by almost all means of transport. The establishment of a Central University in Motihari will go a long way in boosting educational infrastructure in the northern part of Bihar. The Central Government is proposing to establish the new university at Gaya which is already well developed from both educational and other infrastructural point of view. Moreover, it should be the prerogative of the elected Government of a State to choose the site of universities to be established in that State as the State Government is in a better position to know the wishes and aspirations of their people. The imposition of the decision of the Central Government over the opinion of the State Governments also goes against the ethos of federalism. The site of new central universities should be selected only with the concurrence of the respective State Governments.

Hence this Bill.

NEW DELHI;  
May 18, 2012.

RANJAN PRASAD YADAV

## BILL NO. 73 OF 2012

A Bill to provide for welfare and protection of fishermen, payment of compensation to fishermen affected by natural calamities and for matters connected therewith.

BE it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Lakshadweep Fishermen (Welfare) Act, 2012.

Short title,  
extent and  
commencement.

(2) It extends to the Union territory of Lakshadweep.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) "Administration" means the Union territory Administration of Lakshadweep;

(b) "fisherman" means a person who earns his livelihood by fishing and whose source of income is the money he earns from selling such fish;

(c) "fishing" means exploitation, catching or collection of vertebrate and invertebrate animals in the sea by applying or operating any fishing gears or culture of fish and its harvest in the waters surrounding the Union territory of Lakshadweep;

(d) "fishing gear" in relation to fishing includes implements, nets, hooks and lines, cages, traps and harpoons;

(e) "fishing vessel" means a ship or a boat, whether or not fitted with mechanized means of propulsion, which is engaged in fishing for profit;

(f) "offseason" means the period beginning from the first day of May till the last day of October every year;

(g) "fisherman affected by natural calamity" means a fisherman whose property including boat, ship, machine or tools, is lost, destroyed or damaged due to natural calamity;

(h) "Fund" means the Fishermen Welfare Fund constituted under section 4;

(i) "natural calamity" includes floods, cyclone, tsunami, earthquake, strong winds or such other condition as may be notified by the Administrator of the Union territory of Lakshadweep from time to time resulting in loss of life, loss or damage to fishing gear or fishing vessel; and

(j) "prescribed" means prescribed by rules made under this Act.

Payment of  
compensation.

3. (1) Notwithstanding anything contained in any other law for the time being in force, adequate compensation shall be paid by the Central Government, in such manner as may be prescribed, to—

(i) the immediate kin of every fisherman who dies due to any natural calamity or boat capsizing; and

(ii) every fisherman affected by any natural calamity.

(2) The amount of compensation payable to a fisherman under sub-section (1), shall be such as may be specified by the Central Government from time to time, by notification in the Official Gazette.

(3) The Central Government, while specifying the compensation under sub-section (2), shall take into account the actual loss suffered by a fisherman due to natural calamity and ensure that the amount of compensation is proportional to losses suffered by the fisherman.

(4) Every claimant for compensation, shall apply to an officer designated by the Central Government for the purpose of payment of compensation in such form and manner as may be prescribed:

Provided that nothing in this Act shall prevent a Gram Panchayat from applying for compensation on behalf of all the affected fishermen living within the jurisdiction of such Gram Panchayat.

(5) Every claim for compensation under this Act shall be disposed of within a period of thirty days from the date of filing of such claim.

Constitution  
of Fishermen  
Welfare Fund.

4. (1) The Central Government shall, by notification in the Official Gazette, constitute a Fund to be known as the Fishermen Welfare Fund with an initial corpus of rupees fifty crore.

(2) The Central Government shall after due appropriation made by Parliament in this behalf by law, credit such sums to the Fund as it may deem necessary for carrying out the purposes of this Act.

(3) There shall also be credited to the Fund any grants or donations that may be made by any person or institution.

5. (1) The Fund shall be utilised for such welfare measures of fishermen as the Central Government may deem fit.

Utilization of Fund.

(2) Without prejudice to the generality of the foregoing provision, the Fund shall be used for providing—

- (a) help for removal of indebtedness amongst fishermen;
- (b) free ration to fishermen in offseason period;
- (c) subsidy on diesel to the fishermen;
- (d) life insurance cover to the fishermen and their families;
- (e) financial assistance to fishermen for purchase or repair of fishing gears;
- (f) financial assistance during off season periods for payment of instalments of loan availed by fishermen for purchasing vessels and other equipments; and
- (g) free education and health facilities to the children of a fisherman who died in a natural calamity.

6. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

Power to make rules.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both the Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

### STATEMENT OF OBJECTS AND REASONS

The main source of income for the people of Lakshadweep comes from fishing and its allied activities. Therefore, the Bill seeks to ensure certain basic measures required for securing the sustainability and development of fisheries and fishermen in Lakshadweep.

The need of a Fishermen Welfare Fund is of prime importance since it aims to help fishermen in payment of debts and also provides certain basic measures which the Government has not taken so far. Speedy and proportionate payment of compensation is also required since the destruction caused by a natural calamity requires to be addressed immediately. The Bill, therefore, seeks to provide speedy payment of compensation which shall ensure that the damage caused is compensated immediately.

NEW DELHI;  
May 18, 2012.

HAMDULLAH SAYEED

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### FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for the compensation to immediate kin of a fisherman who died in a natural calamity or fishermen affected by natural calamity. Clause 4 provides for constitution of a Fishermen Welfare Fund. Clause 5 provides that the Fund shall be utilized for providing certain facilities to the fishermen. The Bill, therefore, if enacted will involve expenditure from the Consolidated Fund of India. It is estimated that a sum of rupees fifty crore may be involved as recurring expenditure per annum.

No non-recurring expenditure is likely to be involved.

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### MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 6 of the Bill empowers the Central Government to make rules for carrying out the purposes of the Bill. As the rules will relate to matters of detail only, the delegation of legislative power is of a normal character.

## BILL NO. 103 OF 2011

A Bill further to amend the Constitution (Scheduled Tribes) Order, 1950

BE it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (Scheduled Tribes) Order (Amendment) Act, 2011. Short title and commencement.

(2) It shall come into force at once.

C.O. 22 of  
1950.

2. In the Schedule to the Constitution (Scheduled Tribes) Order, 1950, in Part IX-  
*Maharashtra*, after entry 47, the following entries shall be added, namely:— Amendment of  
the Schedule.

"48. Mahadeo Koli, Tokare Koli

49. Pardeshi, Rajput Bhamta."

## STATEMENT OF OBJECTS AND REASONS

There are certain Tribes like Mahadeo Koli, Tokare Koli, Pardeshi and Rajput Bhamta in the State of Maharashtra whose culture, tradition, life style and food habits are akin to other tribes already included in the list of Scheduled Tribes of the State of Maharashtra. The persons belonging to these tribes are still socially, educationally and economically very backward and they do not have any regular avenues of avocation. As such these people have to face lots of hardships. They also do not receive any assistance from the Government. It is unfortunate that people belong to these tribes are not getting Government assistance for their overall development as they do not figure in the list of Scheduled Tribes in the State of Maharashtra. Therefore, these tribes are also needed to be included in the list of Scheduled Tribes in relation to the State of Maharashtra, so that upliftment of these communities can be ensured.

The Bill, therefore, seeks to amend the Constitution (Scheduled Tribes) Order, 1950 with a view to include the above mentioned tribes in the list of Scheduled Tribes in relation to the State of Maharashtra.

Hence this Bill.

NEW DELHI;  
November 9, 2011

A.T. NANA PATIL

## FINANCIAL MEMORANDUM

The Bill seeks to include Mahadeo Koli, Tokare Koli, Pardeshi and Rajput Bhamta communities in the list of Scheduled Tribes in respect of the State of Maharashtra by way of amending the Constitution (Scheduled Tribes) Order, 1950. The Bill, therefore, if enacted would involve expenditure from the Consolidated Fund of India on account of benefits to be provided to the persons belonging to these communities under continuing schemes meant for development of Scheduled Tribes. At this stage, it is not possible to mention the exact amount which may be incurred on this account. However, it is estimated that a sum of approximately rupees fifty crore is likely to be involved as a recurring expenditure per annum.

A non-recurring expenditure of about rupees twenty crore is also likely to be involved.



BILL No. 72 OF 2012

THE HIV/AIDS BILL, 2012

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## BILL NO. 72 OF 2012

A Bill to provide for prevention, control and management of HIV epidemic in India; protection and promotion of human rights of persons living or affected by HIV/AIDS; for establishment of Authorities at the National, State, Union territory and district level to promote such rights and to promote prevention, awareness, care, support, treatment programmes to control the spread of HIV/AIDS and for matters connected therewith or incidental thereto.

WHEREAS the spread of HIV/AIDS is a matter of national concern;

AND WHEREAS there is a need to prevent and control the spread of HIV/AIDS;

AND WHEREAS there is a need to protect and promote the human rights of persons who are HIV positive or are most vulnerable to HIV/AIDS;

AND WHEREAS there is a need for effective and accessible care, support and treatment for persons living with or affected by HIV/AIDS;

AND WHEREAS there is a need to protect the rights of healthcare providers and other such persons providing services to person affected to HIV/AIDS;

AND WHEREAS the Government of India has signed various treaties, agreements and declarations relating to HIV/AIDS, the protection of rights of persons who are HIV positive or affected by HIV/AIDS or are most vulnerable to HIV/AIDS and prevent the spread of HIV/AIDS, including the International Convention on Civil and Political Rights, the

International Convention on Economic, Social and Cultural Rights and the United Nations General Assembly Special Session Declaration of Commitment on HIV/AIDS;

AND WHEREAS it is necessary to give effect to those treaties and declarations under article 253 of the Constitution of India.

BE it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:—

## CHAPTER I

### PRELIMINARY

Short title,  
extent  
and  
commencement.

1. (1) This Act may be called the HIV/AIDS Act, 2012.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "AIDS" means Acquired Immune Deficiency Syndrome,—a condition characterized by a combination of signs and symptoms, caused by HIV, which attacks and weakens the body's immune system making the HIV-positive person susceptible to other life threatening conditions and shall include such signs and symptoms as the National HIV/AIDS Authority may, from time to time, specify;

(b) "appropriate Government" means —

(i) the Central Government in the case of the territory comprising the whole of India,

(ii) the State Government in the case of territory comprised in a State,

(iii) the Union territory Administration, in the case of territory comprised in a Union territory having its own legislature, and

(iv) the Central Government, in the case of other Union territories;

(c) "capacity to consent" means an individual's ability determined on an objective basis irrespective of such individual's age, to understand and appreciate the nature and consequences of a proposed healthcare service, treatment, intervention, procedure or research, or of a proposed disclosure of HIV-related information, and to make an informed decision concerning such service, treatment, intervention, procedure or disclosure;

(d) "children affected by HIV/AIDS" means persons below the age of eighteen years who are HIV positive, or have a parent or guardian who is HIV-positive, or have lost a parent or guardian due to AIDS or live in households fostering children orphaned by AIDS;

(e) "court" means a civil, criminal or revenue court and includes any tribunal or any other authority, constituted under any law for the time being in force, to exercise judicial or quasi-judicial functions;

(f) "discrimination" includes any act or omission including a policy, law, rule, practice, custom, tradition, usage, condition or situation which directly or indirectly, expressly or by effect, immediately or over a period of time,—

(i) imposes burdens, obligations, liabilities, disabilities or disadvantages on,

(ii) denies or withholds benefits, opportunities or advantages from, or

(iii) compels or forces the adoption of a particular course of action by, any person or category of persons, owing to one or more HIV-related grounds.

*Explanation.*—For the purposes of this clause, HIV-related grounds mean—

- (i) HIV status, actual or perceived;
- (ii) actual or perceived association with an HIV-positive person; or
- (iii) actual or perceived risk of exposure to HIV infection; or
- (iv) any other ground where discrimination based on that ground—
  - (a) causes or perpetuates or has a tendency to perpetuate systemic disadvantage in respect of a category of persons, or
  - (b) undermines human dignity, or
  - (c) adversely affects the equal enjoyment of a protected person's rights and freedoms in relation to HIV/AIDS;
- (g) "domestic relationship" means a relationship between two or more persons who live or have lived together in a shared household, and are related by consanguinity or marriage or through a relationship in the nature of marriage or adoption or living together as members of joint family;
- (h) "healthcare provider" means an individual whose vocation or profession is directly or indirectly related to the maintenance of the health of another individual and includes any physician, nurse, paramedic, psychologist, counsellor or other individual providing medical, nursing, psychological or other healthcare services of any kind;
- (i) "HIV" means the Human Immuno Deficiency Virus;
- (j) "HIV/AIDS Authority", means a National, State, Union territory or District HIV/AIDS Authority, as the case may be;
- (k) "HIV-positive person" means a person who tests positive for HIV with a confirmatory HIV test;
- (l) "HIV-related information" means any information related to the HIV status of a person and includes—
  - (i) information related to or concerning the undertaking, performing or result of an HIV test; or
  - (ii) information related to or concerning the HIV or HIV antibody status of a person; or
  - (iii) information related to or concerning the care, support or treatment of a person; or
  - (iv) any other private information concerning a person, collected, received, accessed or recorded in connection with an HIV-related test, HIV-related treatment or HIV-related research or the HIV status of a person; or
  - (v) information which may identify such person.
- (m) "HIV status" means the actual or perceived presence in a person's body of HIV or symptoms of AIDS;
- (n) "HIV test" means a test to determine the presence of the antibody or antigen of HIV, or of HIV infection;
- (o) "HIV-related test" includes an HIV test and tests to determine the presence of conditions related to HIV;
- (p) "IEC" means Information, Education and Communication;
- (q) "informed consent" means consent given, specific to a proposed intervention, without any force, undue influence, fraud, threat, mistake or misrepresentation and

obtained after disclosing to the person giving consent adequate information including risks and benefits of, and alternatives to, the proposed intervention in a language and manner understood by such person;

(*r*) "institution" means any person carrying on systematic activity by co-operation between two or more persons in the previous twelve months, in one or more places with functional integrity, for wages, consideration or otherwise, for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes but does not include any seasonal agricultural operation;

(*s*) "partner" means a spouse and includes a person with whom another person has a relationship in the nature of marriage;

(*t*) "person" includes an individual, a Hindu Undivided Family, any other family, a company, a firm, an association of persons or a body of individuals, whether incorporated or not, in India or outside India, any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956, any body corporate incorporated by or under the laws of a country outside India, a co-operative society registered under any law relating to co-operative societies, a local authority, and every other artificial juridical person;

1 of 1956.

(*u*) "prescribed" means as prescribed in the rules under this Act;

(*v*) "protected person" means a person who is—

(*i*) HIV-positive; or

(*ii*) actually, or perceived to be, associated with an HIV-positive person; or

(*iii*) actually, or perceived to be, at risk of exposure to HIV infection; or

(*iv*) actually or perceived to be, a member of a group actually or perceived to be, vulnerable to HIV/AIDS.

(*w*) "reasonable accommodation" means the alteration of policies, practices, or procedures of or the modification of, or adjustment to, a job or work or other environment or the way things are usually done that enables an HIV-positive person, who is otherwise qualified to enjoy equal benefits and privileges of the programme, service, or activity, or to perform the essential functions of a job or to fulfil the requirements of an educational programme or course, as a similarly-situated person who is not HIV-positive, and includes job restructuring, part-time or modified work or education schedules, or reassignment to a vacant position;

(*x*) "regulations" means regulations made under this Act;

(*y*) "significant risk" means,—

(*i*) the presence of a significant risk body substance; or

(*ii*) a circumstance which constitutes significant risk for transmitting or contracting HIV infection; or

(*iii*) the presence of an infectious source; or

(*iv*) such other risks as the National HIV/AIDS authority may, from time to time, specify.

*Explanation 1.*— "Significant risk body substances" includes blood, blood products, semen, vaginal secretions, breast milk, tissue and the body fluids —



cerebrospinal, amniotic, peritoneal, synovial, pericardial and pleural.

*Explanation 2.*— "circumstances which constitute significant risk of transmitting or contracting HIV infection" includes,—

(i) sexual intercourse including vaginal, anal or oral sexual intercourse which exposes an uninfected person to blood, blood products, semen or vaginal secretions of an HIV-positive person;

(ii) sharing of needles and other paraphernalia used for preparing and injecting drugs between HIV-positive persons and uninfected persons;

(iii) the gestation, birthing or breast feeding of an infant when the mother is an HIV positive person;

(iv) transfusion or transplantation of blood, blood products, organs or other tissues from an HIV-positive person to an uninfected person, provided such blood, blood products, organs or other tissues have not been tested conclusively for the antibody or antigen of HIV and have not been rendered non-infective by heat or chemical treatment;

(v) other circumstances not identified above during which a significant risk body substance, other than breast milk, of an HIV-positive person contacts or lay contact mucous membranes including eyes, nose or mouth, non-intact skin including open wounds, skin with dermatitis condition or abraded areas or the vascular system of an uninfected person. Such circumstances include but are not limited to needle-stick or puncture wound injuries and direct saturation or permeation of these body surfaces by the infectious body substance;

but does not include—

(i) exposure to urine, faeces, sputum, nasal secretions, saliva, sweat, tears or vomit that does not contain blood that is visible to the naked eye;

(ii) human bites where there is no direct blood to blood, or blood to mucous membrane contact;

(iii) exposure of intact skin to blood or any other blood substance;  
and

(iv) occupational settings where individuals use scientifically accepted universal precautions, barrier techniques and preventive practices in circumstances which would otherwise pose a significant risk and such barriers are not breached and remain intact.

(z) "State" shall have the meaning assigned to it under article 12 of the Constitution.

(za) "universal precautions" means infection control measures that prevent exposure to or reduce the risk of transmission of pathogenic agents including HIV and includes education, training, personal protective equipment such as gloves, gowns and masks, hand washing, and employing safe work practices.

3. (1) Any person applying this Act must interpret its provisions to give effect to—

(a) the letter and spirit of the Constitution, the provisions of which include the guarantee of equality, life and personal liberty and the freedom of speech, expression and movement;

(b) compliance with international law obligations including treaty obligations in terms of, amongst others, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the United Nations General Assembly Special Session Declaration of Commitment on HIV/AIDS and the Convention on the Elimination of All Forms of Discrimination against Women and customary international law; and

General  
Declaration  
of Principles  
and  
Interpretation.

(c) the Preamble of this Act, thereby fulfilling the spirit, purpose and objects of this Act.

(2) In the adjudication of any proceedings, which are instituted in terms of or under this Act, the Court shall apply the principle of purposive interpretation and in balancing rights shall follow the principle of the least restrictive alternative.

(3) In the adjudication of any proceedings, which are instituted in terms of or under this Act, the following principles shall apply:—

(a) the expeditious processing of cases, which facilitates participation by the parties to the proceedings;

(b) access to justice to all persons in all judicial and other dispute resolution fora;

(c) the use of corrective or restorative measures in conjunction with measures of a deterrent nature; and

(d) the development of special skills and capacity for persons applying this Act in order to ensure effective implementation and administration thereof.

(4) In the application of this Act, the following shall be recognised and taken into account:—

(a) the existence of systemic discrimination and inequalities, particularly in respect of class, disability, religion, race, caste, sex and place of birth in all spheres of life as a result of past and present discrimination, including that brought about by patriarchy; and

(b) the need to take measures at all levels to eliminate such discrimination and inequalities.

## CHAPTER II

### PROHIBITION OF DISCRIMINATION

Prohibition of  
Discrimination.

4. (1) No person shall be subject to discrimination in any form by the State or any other person in relation to any sphere of public activity including,—

(a) denial of, or termination from, employment or occupation unless in the case of termination,—

(i) a person, who is otherwise qualified, in the written assessment of an independent healthcare provider qualified to make such an assessment, poses a significant risk of transmission of HIV to other persons in the workplace, or is unfit to fulfil the duties of the job; and

(ii) the employer is unable to provide reasonable accommodation due to undue administrative or financial hardship in which case the employer shall along with the letter of dismissal provide a written statement to such person stating the nature and extent of such hardship:

Provided that if the employer fails to provide such written statement, it shall be presumed that there is no such undue administrative or financial hardship;

(b) unfair treatment in, or in relation to, employment or occupation;

(c) denial or discontinuation of, or unfair treatment in, healthcare services;

(d) denial or discontinuation of, or unfair treatment in, educational services;

(e) denial or discontinuation of, or unfair treatment with regard to, access to, or provision or enjoyment or use of any goods, accommodation, service, facility, benefit, privilege or opportunity dedicated to the use of the general public or customarily available to the public, whether or not for a fee including shops, public restaurants,

hotels and places of public entertainment or the use of wells, tanks, bathing ghats, roads, burial grounds or funeral ceremonies and such other public places;

(f) denial or discontinuation of, or unfair treatment with regard to, the right of movement;

(g) denial or discontinuation of, or unfair treatment with regard to, the right to reside, purchase, rent, or otherwise occupy, any property;

(h) denial or discontinuation of, or unfair treatment in, the opportunity to stand for or hold public or private office;

(i) denial of access to, removal from, or unfair treatment in, a State or private institution in whose care or custody a person may be;

(j) denial of, or unfair treatment in, the provision of insurance unless such unfair treatment is based on and supported by actuarial studies;

(k) isolation or segregation of a protected person;

(l) HIV testing as a pre-requisite, for obtaining employment, or accessing healthcare services or education or, for the continuation of the same or, for accessing or using any other service or facility.

*Explanation.*— Without prejudice to the generality of the provisions of this Act, Schedule I to this Act is intended to illustrate and emphasise some instances of unfair treatment, which are discriminatory, in order to address and eliminate such treatment.

(2) Nothing in this Act shall prevent the State or any other person from taking measures for the protection, benefit or advancement of protected persons including the greater involvement of HIV-positive persons for the purpose.

5. No person shall, publish, propagate, advocate or communicate by words, either spoken or written, or by signs or by visible representations or otherwise against any protected person, or group or category of protected persons, in general or specifically, anything or disseminate or broadcast any information, or publish or display any advertisement or notice, that could reasonably be construed to demonstrate an intention to be harmful or to incite harm, promote or propagate hatred, or which is likely to expose protected persons to hatred, discrimination, harm or physical violence.

Prohibition of hate and discriminatory propaganda.

6. No person shall subject, or threaten to subject any other person or persons to any detriment on the grounds that such person or persons have taken or intend to take or are believed to have taken or intend to take any of the following actions:—

Prohibition of victimisation.

(a) make a complaint under this Act; or

(b) bring proceedings under this Act against any person; or

(c) furnish any information, or produce any documents to a person exercising or performing any power or function under this Act; or

(d) appear as a witness in a proceeding under this Act; or

(e) assert their rights or the rights of any other person under this Act; or

(f) allege that a person has done an act that is unlawful by reason of a provision of this Act.

### CHAPTER III

#### INFORMED CONSENT

7. Every person has the right to bodily and psychological integrity including the right

Right to autonomy.

not to be subject to medical treatment, interventions or research without that person's informed consent.

Informed  
consent for  
HIV testing,  
treatment  
and research.

8. (1) Subject to the provisions of this Act, no HIV-related test or HIV-related treatment of a person or HIV-related research involving a person, shall be undertaken or performed except with the informed consent of that person or that person's representative in accordance with sub-section (2) below.

(2) The informed consent of a person's representative shall be taken only in the following circumstances:

(a) where the person has died, from that person's partner or if he has no partner from the next of kin or administrator or executor;

(b) where in the case of an HIV-related test or HIV-related treatment:—

(i) the person is under the age of twelve years, from that person's parent or legal or *de-facto* guardian or next friend; and

(ii) the person is between the ages of twelve and sixteen years and, in the written assessment of the concerned healthcare provider lacks the capacity to consent, from that person's parent or legal or *de-facto* guardian or next friend.

(c) where in the case of HIV-related research, the person is below the age of eighteen years, from that person's parent or legal or *de-facto* guardian or next friend.

(d) where, in the written assessment of the concerned healthcare provider, the person lacks the physical or mental capacity to consent, from that person's partner, or relative or legal or *de-facto* guardian;

(e) in an emergency situation, where the person is unconscious, or otherwise unable to give informed consent, from that person's partner, or relative or legal or *de-facto* guardian;

(f) in clauses (a) to (e) above, where a representative of the person is not available to give informed consent, or in clause (e) above, in the opinion of the healthcare provider, is not acting in the best interest of the person, then the same shall be taken from an authorised representative of the concerned institution or an independent healthcare provider:

Provided that where informed consent is given by a person's representative under sub-clause (2) (b), (c) and (d) best efforts shall be made to involve the person for whom informed consent is being given in the informed consent process and where informed consent is being given by the representative under sub-section (2) (e) the person for whom informed consent is being given shall as soon as possible be informed of the decision.

(3) Informed consent taken under sub-section (1) or (2) shall be recorded in writing:

Provided that where a person is unable to give informed consent in writing, informed consent may be taken verbally from that person and a record of such informed consent shall be entered into records maintained by the person taking the informed consent.

(4) The National HIV/AIDS Authority shall within one hundred and eighty days of its constitution, notify counselling protocols that shall be applicable to all persons including counselling protocols for HIV-tests, HIV-related tests, HIV-related treatment and HIV-related research and counselling protocols for children who are HIV positive including the manner in which such children shall be involved in the informed consent process and how and who shall disclose their status to them.

(5) Every institution involved in HIV-related testing, HIV-related treatment or HIV-related research shall follow counselling protocols for women and children to ensure they have

access to conducive settings that facilitate their individual decision making for HIV-related testing, HIV-related treatment or HIV-related research.

(6) Informed consent for an HIV-test shall be valid only when the person being tested is provided pre-test and post-test counselling in accordance with the Regulations:

Provided that where a representative of the person is giving informed consent such representative shall also receive counselling.

(7) Informed consent for HIV-related treatment shall be valid only when the person who is to be administered the treatment, and such person's representative, in case the informed consent is being given by a representative under sub-section (2), is explained the risks and benefits of the proposed treatment, including the nature of HIV/AIDS, the treatments available for it, the alternatives that may be available, the stages when they can be administered, their duration, their side-effects, the likely expenses and the adherence requirements of such treatment.

(8) Informed consent for HIV-related research shall be considered valid only when the potential research subject, and such person's representative, in case the informed consent is being given by a representative under sub-section (2), is comprehensively informed of the aims, methods, sources of funding, any possible conflicts of interest, institutional affiliations of the researcher, the anticipated benefits and potential risks of the study, the discomfort it may entail and the right to abstain from participation in the research or to withdraw consent to participate in the research at any time without any adverse consequences.

9. Informed consent for an HIV-related test shall not be required in the following circumstances:—

Exceptions to informed consent for an HIV-related test.

(a) when an HIV-related test is ordered by a court:

Provided that no court shall order an HIV-related test to be carried out either as part of a medical examination or otherwise, unless the court,—

(i) determines by an order that the carrying out of the HIV-related test is necessary for the determination of issues and in the interest of justice in a matter before it; and

(ii) ensures that the person being tested receives pre-test and post-test counselling and that the HIV-related information of that person is not disclosed except in accordance with the provisions of this Act.

(b) for HIV-related testing in the procuring, processing, distribution or use of a human body or any part thereof, including organs, tissues, blood, semen or other body fluids for use in medical research or therapy or for transplantation, transfusion to, or artificial insemination of persons:

Provided that if the test results are requested by a donor prior to donation, then the donor will be referred to a Voluntary Counselling and Testing Centre and shall not be entitled to the results of the test unless the donor has received post-test counselling from the Voluntary Counselling and Testing Centre;

(c) for epidemiological or surveillance purposes where the HIV test is anonymous and unlinked and is not for the purpose of determining the HIV status of a person:

Provided that persons who are subject of such epidemiological or surveillance studies shall be informed of such studies in accordance with the Regulations.

10. (1) Notwithstanding anything contained in any other law for the time being in force, no person shall be subject to an HIV test except in accordance with the provisions of this Act.

HIV testing.

(2) Subject to the provisions of this Act, no HIV test may be recommended or performed except,—

- (a) for the voluntary determination of the HIV status of a person; or
  - (b) if it is medically indicated for the appropriate treatment or care and in the best interest of the person being tested.
- (3) An HIV test may be performed only by,—
- (a) a Voluntary Counselling and Testing Centre; or
  - (b) a pathology laboratory, either independent or attached to a healthcare institution; or
  - (c) a blood bank licensed under the law for the time being in force:

Provided that the Central Government shall, within three hundred and sixty days of the commencement of this Act, formulate and notify regulations for the recognition of Voluntary Counselling and Testing Centres and pathology laboratories by the concerned HIV/AIDS Authority which shall provide *inter alia* the requirements for recognition and the time period within which a decision on recognition shall be taken and existing Voluntary Counselling and Testing Centres and pathology laboratories shall, within ninety days of the notification of such regulations apply for such recognition and from the date of such notification only recognised Voluntary Testing and Counselling Centres, pathology laboratories and blood banks shall perform HIV tests.

(4) A person who seeks to voluntarily determine their HIV status and who wishes to remain anonymous shall have the right to do so, and to provide informed consent in writing by using a coded system that does not link their individual identity with the request or result of the HIV test.

(5) No person shall market or sell technologies for self-testing of HIV except in accordance with the regulations.

#### CHAPTER IV

##### DISCLOSURE OF INFORMATION

Right to  
Privacy.

11. Every person shall have the right to privacy.

Disclosure of  
Information.

12. (1) Notwithstanding anything contained in any other law for the time being in force, no person shall be compelled to disclose HIV-related information or any other private information concerning themselves except when a court determines by an order that the disclosure of such information is necessary for the determination of issues and in the interest of justice in a matter before it.

(2) Notwithstanding anything contained in any law for the time being in force, no person shall disclose or be compelled to disclose HIV-related information or any other private information of another person, imparted in confidence or in a relationship of a fiduciary nature, except with the informed consent of that person or a representative of the person as specified in sub-section (2) of section 8:

Provided that where the relationship is of a fiduciary nature, informed consent shall be recorded in writing:

Provided further that all HIV-related information shall be presumed to have been imparted or received in confidence unless otherwise shown.

(3) Informed consent for disclosure of HIV-related information or private information is not required in case the disclosure is made,—

(a) by a healthcare provider to another healthcare provider who is involved in the provision of care, treatment or counselling of a person, when such disclosure is necessary to provide care or treatment in the best interest of that person; or

(b) by an order of a court when it determines by such order that the disclosure of such information is necessary for the determination of issues and in the interest of

justice in a matter before it; or

(c) in suits or legal proceedings between persons, where the disclosure of such information is necessary in the initiation of such proceedings or for instructing counsel; or

(d) in accordance with section 13; or

(e) if it relates to statistical or other information of a person that could not reasonably be expected to lead to the identification of that person; or

(f) in accordance with the regulations under section 15.

(4) Any person to whom disclosure is made under this Chapter is prohibited from making further disclosure except as provided in this Chapter.

(5) Any person to whom disclosure under clause (e) of sub-section (3) is made shall not use such information to identify the person to whom it pertains or present it in a manner whereby such identification is possible.

13. A healthcare provider who is a physician or a counsellor, may inform the partner of a person under their direct care of such person's HIV-positive status only when,—

Partner  
notification.

(a) the healthcare provider bona-fide and reasonably believes that the partner is at significant risk of transmission of HIV from such person;

(b) the HIV-positive person has been counselled to inform such partner;

(c) the healthcare provider is satisfied that the HIV-positive person will not inform such partner;

(d) the healthcare provider has informed the HIV-positive person of the intention to disclose the HIV-positive status to such partner; and

(e) such disclosure to the partner is made in person and with appropriate counselling or referrals for counselling:

Provided that the healthcare provider shall have no obligation to identify or locate the partner of an HIV-positive person:

Provided further that no criminal sanction or civil liability shall arise against a healthcare provider for the disclosure or non-disclosure, as the case may be, of confidential HIV related information to a partner in accordance with section 13.

*Exception:* The healthcare provider shall not inform a partner, particularly in the case of women, where there is a reasonable apprehension that such information may result in violence, abandonment or actions which may have a severe negative effect on the physical or mental health and safety of the HIV positive person, their children or any person who is close to them.

14. Every person who is HIV-positive, and is aware of such status and, has been counselled in accordance with this Act or is aware of the nature of HIV and how it is transmitted, shall take all reasonable measures and precautions to prevent the transmission of HIV to others which may include adopting strategies for the reduction of risk or informing in advance any sexual contact or person with whom needles are shared of that fact.

Duty to  
prevent  
transmission.

*Exception:* There shall be no duty to prevent transmission, particularly in the case of women, where there is a reasonable apprehension that the measures and precautions may result in violence, abandonment or actions which may have a severe negative effect on the physical or mental health and safety of the HIV-positive person, their children or someone who is close to them.

15. Every institution that records or stores HIV-related information of a person shall, within one hundred and eighty days of the commencement of this Act, formulate and implement

Data  
protection.

data protection measures in accordance with the Regulations, to ensure that such information is protected from disclosure.

*Explanation.*—Data protection measures shall include procedures for protecting information from disclosure, procedures for accessing information, particularly in exceptional circumstances, provision for security systems to protect the information stored in any form and mechanisms to ensure accountability and liability of persons in the institution.

Prohibition  
on  
publication.

16. No person shall print, publish, broadcast or in any manner release HIV-related information or private information of a person without the informed consent in writing of such person.

## CHAPTER V

### ACCESS TO TESTING, TREATMENT AND COUNSELLING

Right to  
Health.

17. (1) Every person shall have the right to enjoy the highest attainable standard of physical and mental health.

(2) The State shall respect, protect and fulfil the right to the highest attainable standard of physical and mental health of all persons.

(3) Without prejudice to the generality, of sub-sections (1) and (2), the State shall, based on principles of availability, accessibility and acceptability, provide,—

(a) free of cost HIV-related prevention, care and support facilities, goods, measures, services and information, including centres providing voluntary testing and counselling services in every sub-district in accordance with the Regulations; and

(b) free of cost treatment for HIV/AIDS for all persons.

*Explanation.*—For the purposes of this Chapter 'treatment' includes health facilities, goods, measures, services and information for the curative and palliative care of HIV/AIDS and related opportunistic infections and conditions including,—

(i) counselling;

(ii) the effective and monitored use of medicines for opportunistic infections;

(iii) post exposure prophylaxis;

(iv) anti-retroviral therapy;

(v) nutritional supplements;

(vi) measures for the prevention of mother-to-child transmission;

(vii) infant milk substitutes; and

(viii) other safe and effective medicines, diagnostics and related technologies.

(4) To fulfil its obligations under this Chapter, the State shall, *inter alia*, ensure that continuous and sustainable access to HIV-related prevention and treatment is not hampered or impeded by procedural or other requirements and shall ensure that the process whereby its obligations are fulfilled is transparent and accountable and is evaluated on a regular basis.

(5) The appropriate Government shall within one hundred and eighty days of the coming into force of this Act, ensure the availability of medical infrastructure, including diagnostic technologies, required for the prevention and treatment of HIV/AIDS within its jurisdiction.



18. The National HIV/AIDS Authority shall, within one hundred and eighty days of its constitution and establishment, notify guidelines for HIV/AIDS related testing and HIV-related treatment that shall be applicable to all persons through a consultative process and ensure the wide dissemination of the same.

Protocols for HIV-related treatment.

19. The appropriate Government shall take effective legislative, administrative and fiscal measures including,—

Measures to be taken by State.

(a) ensuring the use of all options to promote access to healthcare including provision of travel subsidies for HIV-positive persons to facilitate access to treatment;

(b) the training and capacity building of healthcare providers and public health authorities, in consultation with HIV-positive persons and other protected persons, for the provision, prescription and monitoring of HIV-related treatment and prevention;

(c) ensuring that all other laws are in consonance with the provisions of this Chapter and in particular that the right to health is not in any manner restricted or compromised on account of the protection of intellectual property rights;

(d) introducing tax incentives and exemptions on HIV-related treatment in order to promote its affordability, accessibility and availability;

(e) ensuring that the pricing of medication, diagnostics and related technologies pursuant to any statute, regulation or order is fixed in a manner that is transparent, accountable and open to public scrutiny and that promotes its affordability, accessibility and availability;

(f) ensuring that incentives to encourage investment in research and development are provided to entities, particularly those run by the State to develop, manufacture, market and distribute affordable and accessible preventive, curative and palliative care and treatment.

## CHAPTER VI

### SAFE WORKING ENVIRONMENT

20. (1) Every person shall have the right to safe working environment.

Right to Safe Working Environment.

(2) Every institution providing healthcare services and every institution where there is a significant risk of occupational exposure to HIV, shall provide free of cost,—

(a) universal precautions to all persons working or present in such institution who may be occupationally exposed to HIV, including employees, interns, attendants and contract workers, and appropriate training for the use of such universal precautions; and

(b) post exposure prophylaxis to all persons working in such institution who may be occupationally exposed to HIV/AIDS, including employees, interns, and contact workers, with appropriate counselling services.

(3) Every institution referred to in sub-section (2) comprising twenty or more persons shall provide HIV-related treatment and compensation to persons working in such institution who are occupationally exposed to and acquire HIV.

(4) Every institution referred to in this Chapter, shall within sixty days of the commencement of this Act,—

(a) ensure that the universal precautions and Post Exposure Prophylaxis protocols in accordance with the Regulations are complied with in the institution and inform all persons working in the institution of the details of availability of universal precautions and post exposure prophylaxis in the institution and shall make special efforts to ensure that lower cadre workers in such institutions are trained in using and can access universal precautions; and

(b) where applicable, notify and widely disseminate a treatment and compensation policy in accordance with the regulations specifying the procedure for persons to claim treatment or compensation or both as provided in sub-section (3) including the medical records, tests and incident reports required to make the claim:

Provided that such policy shall not specify mandatory HIV testing including pre employment testing as a requirement for claiming treatment or compensation:

Provided further that any person claiming occupational exposure to HIV, in an institution that does not comply with sub-section (4)(a) and (b), shall be presumed to have been occupationally exposed to HIV and shall be entitled to treatment and compensation without any requirement of further proof.

(5) Every healthcare provider and every other person who may be occupationally exposed to or may occupationally transmit HIV shall use universal precautions in accordance with the regulations in the course of their work.

(6) Every healthcare provider and every institution providing healthcare services shall ensure basic cleanliness and hygiene and the implementation of infection control measures in accordance with the regulations and any other law for the time being in force.

(7) The National HIV/AIDS Authority shall within ninety days of its constitution and establishment notify protocol for universal precautions and post exposure prophylaxis that shall be applicable to all persons.

## CHAPTER VII

### PROMOTION OF STRATEGIES FOR REDUCTION OF RISK

Strategies for  
Reduction of  
Risk.

21. (1) Notwithstanding anything contained in any law for the time being in force,—

(a) the implementation or use of any strategy for reducing the risk of HIV transmission; or

(b) the provision or possession of any tool or paraphernalia for reduction of risk of HIV transmission, or any act pursuant thereto, shall not, in any manner, be prohibited, impeded, restricted or prevented and shall not amount to a criminal offence or attract civil liability.

*Explanation.*—Strategies for reducing risk of HIV transmission means promoting actions or practices that minimise a person's risk of exposure to HIV or mitigate the adverse impacts related to HIV/AIDS including,—

(i) the provision of information, education and counselling services relating to HIV prevention and safe practices;

(ii) the provision and use of safer sex tools, including condoms, lubricants, female-controlled barrier methods, and safety drug use paraphernalia, including clean needles, syringes, bleach and other appropriate sterilising equipment accompanied by information on their use;

(iii) drug substitution, drug maintenance and needle and syringe exchange programmes in accordance with sub-section 2; and

(iv) the provision of any strategy for reducing risk of HIV transmission including those contained in sub-sections (i), (ii) and (iii) above to person below the age of eighteen years who in the opinion of the provider of strategies for reducing risk of HIV transmission have the capacity to consent to such strategy.

### Illustrations

(a) A, supplies condoms to B, a sex worker or to C, a client of B. Neither A, nor B, nor C can be held criminally or civilly liable for such actions or be prohibited, impeded, restricted or prevented from implementing or using the strategy.

(b) M, an intervention project on HIV/AIDS and sexual health information, education and counselling for men who have sex with men provides safer sex information, material and condoms to N, a man who has sex with other men. Neither M nor N can be held criminally or civilly liable for such actions or be prohibited, impeded, restricted or prevented from implementing or using the interventions.

(c) X, an intervention providing registered needle exchange programme services to injecting drug users, supplies a clean needle to Y, an injecting drug user who exchanges the same for a used needle. Neither X nor Y can be held criminally or civilly liable for such actions or be prohibited, impeded, restricted or prevented from implementing or using the intervention.

(d) R, an intervention programme for children living on the streets and K, a counsellor in a school, provide sexual health and safer sex information, education and counselling, material and small-sized condoms to S, a child living on the street and L, a student in school, respectively. Neither R, S, K nor L can be held criminally or civilly liable for such actions or be prohibited, impeded, restricted or prevented from implementing or using the intervention.

(2) No person shall implement a drug substitution or drug maintenance or needle and syringe exchange programme unless such programme is implemented in accordance with the regulations.

(3) Any information obtained or maintained in records by a person implementing a drug substitution or drug maintenance or needle and syringe exchange programme or any other strategy for the reduction of risk of HIV transmission shall be considered to be private information for the purpose of Chapter IV of this Act.

(4) (a) No public servant, including a law enforcement official shall arrest or detain, or in any manner harass, impede, restrict or otherwise prevent any person implementing or using strategies for reduction of risk of HIV transmission in accordance with the provisions of this Act.

(b) A public servant who violates the provisions of clause (a) of sub-section (4) shall be subject to misconduct proceedings under the relevant Act including the relevant Police Act and the report of such misconduct shall form part of the confidential records of such public servant.

## CHAPTER VIII

### SOCIAL SECURITY

22. (1) The appropriate Government shall, by notification within three hundred and sixty days of the commencement of this Act, formulate, frame and implement health insurance and social security schemes including inter alia,—

Social  
security  
scheme.

(a) schemes that address HIV/AIDS and related illnesses and mitigate the social and economic impact of HIV/AIDS and related illnesses;

(b) schemes that cover HIV-positive persons, other protected persons, women, children, healthcare providers and older persons;

(c) a scheme that provides for access to shelter, food, education and treatment for children affected by HIV/AIDS;

(d) a scheme that provides cash for HIV-positive women with children; and

(e) a contributory insurance scheme between the appropriate Government, healthcare institutions and healthcare providers.

## CHAPTER IX

## INFORMATION, EDUCATION AND COMMUNICATION

Right to  
Information.

23. (1) Every person shall have the right to information and education relating to health and the protection of health from the State.

(2) No person shall be denied access to and availability of HIV/AIDS-related IEC, including information relating to sexual health, sexuality and safe drug use, by the State:

Provided that where the person is below the age of twelve years and, in the opinion of the provider of information, is incapable of understanding and appreciating the nature of the HIV/AIDS-related IEC, the provider may, in the best interests of the person, require the presence of a person above the age of sixteen years of the person's choice before providing such information.

Duty of State  
to promote  
HIV/AIDS-  
related IEC.

24. (1) The State, based on evidence or scientific information, and in a manner that does not promote gender and sexual stereotypes and is age-appropriate, gender-sensitive, non-stigmatising, non-discriminatory and promotes gender equality, shall in accordance with sub-section (3),—

(a) formulate, institute and implement sustained multi-lingual, easily understood, and regularly updated national, State and local HIV/AIDS-related IEC programmes, which are accessible and available to all persons;

(b) develop and conduct a multi-lingual national programme of public education and information to promote an understanding and acceptance of this Act; and

(c) ensure community mobilisation and participation, in the provision of HIV/AIDS-related IEC at all levels throughout the country.

(2) Without prejudice to the generality of sub-section (1), the State shall ensure,—

(a) that women of all ages shall have access to accurate and comprehensive HIV/AIDS-related IEC focussing on their needs;

(b) that every person below the age of eighteen years has access to adequate and accurate HIV/AIDS-related IEC including sexual health information and education;

(c) that HIV/AIDS-related IEC is designed and developed for and readily accessible to and usable by all persons with disabilities;

(d) that in relation to education,

(i) a continuing HIV/AIDS-related IEC programme is implemented in all formal and non-formal educational settings for all learners, students, educators and other staff members;

(ii) age-appropriate HIV/AIDS-related IEC forms part of, and is integrated into, all aspects of the curriculum for all learners and students, including information on HIV/AIDS, stigma and discrimination related to HIV/AIDS, modes of transmission, prevention, care, support and treatment available for HIV;

(iii) all boards of education, authorities of education and all persons responsible for setting curricula shall, for the academic year following the commencement of this Act, formulate and institute curriculum, for HIV/AIDS education including in all curricula related to medical, health, State service, legal, teaching and social work education, for the following academic year;

(iv) the proper and ongoing training of all educators in relation to HIV/AIDS-related IEC and its dissemination takes place;

(e) that all persons in institutions not covered under Chapter XII receive minimum information and instruction of HIV/AIDS, particularly relating to discrimination and disclosure of information in the workplace and shall take proactive steps to impart HIV/AIDS-related IEC to such persons;

(f) that the Armed Forces, paramilitary forces, law enforcement and drug enforcement agencies provide all personnel with HIV/AIDS-related IEC particularly in relation to prevention, discrimination and disclosure of information;

(g) that every HIV/AIDS-related prophylactic including condoms offered for sale, sold or supplied in any other manner to any person shall be accompanied by information, including pictorial representations and literature on the proper use of the prophylactic device or agent, its efficiency against HIV and sexually transmitted infections, and the importance of adopting safer sexual practices, in English and the local language of the region where the prophylactic is supplied;

(h) that HIV/AIDS-related IEC is adequately provided at places of entertainment and travel points including train stations, bus stations, international ports of entry and exit, domestic airports, and other travel centres;

(i) that HIV/AIDS-related IEC is provided in all State institutions, including in care and custodial settings; and

(j) that all HIV/AIDS-related IEC is widely disseminated through all forms of media including print, electronic, mass and digital media.

(3) For the purposes of this section, the State shall hold ongoing and sustained consultations with different stakeholders including HIV-positive persons, protected persons, women's groups, persons working in the field of HIV/AIDS, public health experts, children's groups, and parents and guardians of learners.

25. (1) HIV/AIDS related information dissemination shall form part of the delivery of health services by healthcare providers.

HIV/AIDS  
information  
as a health  
service.

(2) It shall be the duty of every healthcare provider to make available to the public, subject to the provisions of this Act, such information as is necessary in the prevention, care, support and treatment of HIV/AIDS.

(3) Every healthcare institution shall enhance the knowledge and capacity of all healthcare providers working in or employed by it, to include skills for proper information dissemination and education on HIV/AIDS and the training of healthcare providers shall include discussions on HIV-related issues such as discrimination, confidentiality, informed consent and the duty to provide treatment.

## CHAPTER X

### APPOINTMENT OF HEALTH OMBUD

26. (1) The appropriate Government shall, within ninety days of the commencement of this Act, appoint by notification in the Official Gazette, one or more Health Ombuds for each district to exercise the powers conferred upon and perform the functions assigned, under this Act.

Appointment  
of Health  
Ombud.

(2) The appropriate Government may appoint as Health Ombud, any person who has working experience or extensive knowledge of public health or healthcare delivery systems, is independent, and sensitive to issues addressed in this Act, including a healthcare provider or a person working in a non-governmental organisation.

(3) A person appointed as Health Ombud under sub-section (1) shall,—

(a) when appointed for a Union territory, be conferred the rank of the Joint Director of Health and Family Welfare; and

(b) when appointed for a district of the State, be conferred the rank of the Officer responsible for Health for such district.

(4) The Health Ombud shall within seven days of being appointed, undergo training on HIV/AIDS and this Act in accordance with the regulations.

(5) The appropriate Government shall within thirty days of the commencement of this Act launch a website or web page on the Internet dedicated to the offices of each Health Ombud appointed by it, which shall provide inter alia information relating to the functioning of the office of the Health Ombud, the procedure for filing and sending complaints, the number, nature of complaints received, and decisions and directions given by the Health Ombud:

Provided that the provision of the information on the website shall ensure the maintenance of the confidentiality of complainants and other parties to the complaints.

Tenure of  
office of  
Health  
Ombud.

27. (1) The Health Ombud shall hold office for a term of three years from the date on which such person enters office and shall be eligible for reappointment.

(2) The Health Ombud may relinquish office by giving written notice of not less than three months to the appropriate Government.

(3) The appropriate Government may remove a Health Ombud from office who:—

(a) is, or at any time has been, adjudged as insolvent;

(b) has become physically or mentally incapable of acting as the Health Ombud;

(c) has been convicted of any offence or has acquired such financial or other interest which is in the opinion of the appropriate Government likely to prejudicially affect such person's functions as the Health Ombud; or

(d) has so abused the position as to render continuation in office detrimental to the public interest:

Provided that a Health Ombud shall not be removed from office without being given a reasonable opportunity of being heard in the matter.

Salary and  
Allowances  
of Health  
Ombud.

28. The salary and allowances payable to, and other terms and conditions of service of, the Health Ombud shall be such as may be prescribed:

Provided that such salary, allowances and other conditions of service shall not be varied to the disadvantage of the Health Ombud after appointment.

Functions of  
Health  
Ombud.

29. (1) The Health Ombud, may *suo motu* and shall, on a complaint by any person, inquire, at the request of the appropriate Government or its agencies or order of any court, into violations of the provisions of this Act by any person in relation to the provision of healthcare services in such Health Ombud's jurisdiction.

(2) The Health Ombud shall inquire into and decide a complaint promptly and in any case within fifteen working days:

Provided that in cases of emergency, the Health Ombud shall decide the complaint within one day:

Provided further that in case the complaint is not decided within the time period specified above, the proceedings before the Health Ombud shall not lapse and the Health Ombud shall record in writing reasons for the delay and provide copies of the same to both parties.

(3) The Health Ombud shall inquire into instances or complaints of the manufacture, marketing, distribution, provision, prescription and sale of any licensed or unlicensed substance, service or therapy, or any advertisement or article or any broadcast or telecast falsely claiming to cure, prevent or alleviate medical conditions associated with HIV/AIDS

and based on such inquiry may file a complaint with the concerned authority including law enforcement authorities or initiate legal proceedings, and shall report the findings of the inquiry, along with recommendations, if any, with the appropriate Government and the concerned authority, if any, for action.

30. (1) The Health Ombud shall follow such procedure as may be prescribed:

Powers and  
Procedure.

Provided that all stages of such procedure shall be readily accessible to and usable by all persons including persons with disabilities and illiterate persons.

(2) The Health Ombud may receive complaints *via* post, telephonically or *via* the Internet or in any other manner as may be prescribed.

(3) The Health Ombud may decide the complaint based on representations of the parties to the complaint or may require a hearing of the parties to the complaint.

5 of 1908.

(4) The Health Ombud shall, while inquiring into complaints under this Act, have all the powers of a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of witnesses and examining them on oath;

(b) discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses or documents; and

(f) any other matter, which may be prescribed.

45 of 1860.

(5) The Health Ombud shall have the power to require any person, to furnish information on such points or matters as, in the opinion of the Health Ombud, may be useful for, or relevant to, the subject matter of an inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of sections 176 and 177 of the Indian Penal Code, 1860.

1 of 1974.

(6) The Health Ombud or any other officer, not below the rank of a Gazetted Officer, specially authorised in this behalf by the Health Ombud may enter any building or place where the Health Ombud has reason to believe that any document relating to the subject matter of an inquiry may be found, and may seize any such document or take extracts or copies therefrom subject to the provisions of section 100 of the Code of Criminal Procedure, 1973, in so far as it may be applicable.

(7) The Health Ombud shall maintain records in such manner as may be prescribed.

45 of 1860.

(8) The Health Ombud shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860.

(9) The Health Ombud may appoint such number of persons as may be necessary to assist in the functioning of the Health Ombud office including in relation to the inquiry of a complaint under sub-sections (1) and (3) of section 29.

(10) The Central Government shall prescribe rules for the purposes of this Chapter within sixty days of the commencement of the Act.

31. (1) The Health Ombud shall, in order to rectify the breach or withdraw the violation complained of under this Act, have the power to—

Findings and  
orders.

(a) pass orders, in cases of emergency without considering the representations of the parties to the complaints or without hearing them as the case may be, including directing admissions, operations or treatment and the provision of universal precautions:

Provided that the Health Ombud shall, as soon as may be, after the passing of such orders, consider the representations of the parties or give them an opportunity to be heard as the case may be, and pass appropriate orders;

(b) pass orders for the withdrawal and rectification of the violation complained of;

(c) pass orders directing the person who has committed the violation to undergo a fixed period of counselling related to the violation committed and a fixed period of social service;

(d) direct specific steps or special measures or both to be taken; and

(e) direct any person who has committed the violation to make regular reports to the Health Ombud regarding implementation of the Health Ombud's order.

(2) The Health Ombud shall pass orders that contain brief reasons for the passing of such orders.

(3) The Health Ombud, may, subject to any rules made in this behalf, make such orders he may consider reasonable.

(4) An order of the Health Ombud shall be binding on the parties to the complaint.

32. All authorities including civil authorities functioning within the jurisdiction of the Health Ombud shall be bound by the orders of the Health Ombud and shall assist in their execution.

Civil  
Authorities  
to carry out  
Health  
Ombud  
Orders.

Consequences  
of breach of  
Health  
Ombud  
Orders.

33. (1) All orders passed by the Health Ombud under section 31 shall be deemed to be orders under Order 39 Rule 1 of the Code of Civil Procedure, 1908 and the breach of such an order shall be dealt with by applications to the Health Ombud which shall be treated as an application under Order 39 Rule 2A of the Code Civil Procedure, 1908.

5 of 1908.

5 of 1908.

(2) For the purposes of this Chapter "Court" in Order 39 of the Code of Civil Procedure, 1908 shall include the Health Ombud.

5 of 1908.

Report to  
Government.

34. The Health Ombud shall, every six months, report to the appropriate Government, the number and nature of complaints received, the action taken and orders passed in relation to such complaints and a copy of such report shall be forwarded to the National HIV/AIDS Authority and the concerned HIV/AIDS Authority.

Right of  
Redressal.

35. Nothing contained in this Chapter prohibits, limits or otherwise restricts the right of a person to other remedies provided under this Act or any other law for the time being in force to address violations of the provisions of this Act.

## CHAPTER XI

### HIV/AIDS AUTHORITY

Constitution  
of HIV/AIDS  
Authorities.

36. (1) The Central Government shall for the whole country, on the appointed date, constitute and establish, in accordance with the provisions of this Act, a body to be known as the National HIV/AIDS Authority to exercise the powers conferred upon and perform the functions assigned to it, under this Act.

(2) The appropriate Government for each Union territory and for each State, shall, on the commencement of this Act, constitute and establish, in accordance with the provisions of this Act, a State or Union territory HIV/AIDS Authority as the case may be, under such name as may be specified in the notification to exercise the powers conferred upon, and perform the functions assigned to it, under this Act.

(3) The appropriate Government for each district in a Union territory and the State Government for each district in a State shall where a District AIDS Control Society exists, and



may for other districts, constitute and establish, in accordance with the provisions of this Act a body to be known as the District HIV/AIDS Authority under such name as may be specified in the notification, to exercise the powers conferred upon and perform the functions assigned to it, under this Act.

*Explanation.*—For the purposes of this Chapter, the appointed date shall be such date, being a date not later than six months of the commencement of this Act, as the appropriate Government may by notification appoint for the constitution and establishment of the concerned HIV/AIDS Authority.

37. The HIV/AIDS Authority shall be a body corporate with the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose off property and to contract, and may, by the aforesaid name, sue or be sued.

HIV/AIDS Authority to be body corporate.

38. (1) The head office of the National HIV/AIDS Authority shall be at Delhi and the National HIV/AIDS Authority may establish offices at such other places in India.

Office of HIV/AIDS Authority.

(2) The head office of State, Union territory and District HIV/AIDS Authorities shall be at the State capital, Union territory capital and District headquarters respectively and such HIV/AIDS Authorities may establish offices at other places in their jurisdiction as may be deemed necessary.

39. (1) The National HIV/AIDS Authority shall comprise—

Composition of HIV/AIDS Authorities.

(a) a full-time Director, being a person with special knowledge or practical experience in matters relating to HIV/AIDS, to be nominated by the Nomination Committee concerned;

(b) five full-time members to be nominated by the Central Government;

(c) one person each from the Northern, Southern, Eastern, Western and North-Eastern State and Union territory HIV/AIDS Authorities to be nominated by the Central Government on an annual rotating basis;

(d) a full-time member being an HIV-positive person to be nominated by the Nomination Committee concerned;

(e) five persons to be nominated by the Central Government in accordance with section 42, to represent HIV-positive persons, other protected persons, healthcare providers, women, non-governmental organisations working in the field of HIV/AIDS or any other interest which, in the opinion of the Central Government, ought to be represented;

(f) a full-time member-HIV/AIDS expert, being a person having special knowledge or practical experience in respect of matters relating to public health, human rights and HIV/AIDS, nominated by the Central Government in accordance with section 42;

(g) a full-time member-secretary, possessing qualifications, knowledge and experience of various aspects of HIV/AIDS, to be made available by the Central Government.

*Explanation.*—For the purposes of this sub-section, Northern States are Jammu and Kashmir, Punjab, Haryana, Chandigarh, Delhi, Rajasthan, Uttar Pradesh, Uttarakhand and Himachal Pradesh, Western States are Maharashtra, Gujarat, Madhya Pradesh, Daman and Diu, Lakshadweep and Dadra and Nagar Haveli, Eastern States are West Bengal, Orissa, Bihar, Chhattisgarh, Jharkhand, Sikkim and Andaman and Nicobar Islands, Southern States are Karnataka, Goa, Tamil Nadu, Kerala, Pondicherry and Andhra Pradesh and North-Eastern States are Manipur, Assam, Meghalaya, Mizoram, Nagaland, Tripura and Arunachal Pradesh.

(2) A State or Union territory HIV/AIDS Authority shall comprise —

(a) a full-time Director, being a person having special knowledge or practical experience in respect of matters relating to HIV/AIDS or a person having knowledge and experience in administering institutions dealing with the matters aforesaid, to be nominated by the concerned State or Union territory Nomination Committee;

(b) five full-time members to be nominated by the appropriate Government;

(c) five members, to be nominated by the appropriate Government from amongst members of local authorities functioning within the State or Union territory, as the case may be;

(d) a full-time member being an HIV-positive person to be nominated by the concerned Nomination Committee;

(e) five persons to be nominated by the appropriate Government in accordance with section 42, to represent HIV-positive persons, other protected persons, healthcare providers, women, non-governmental organisations working in the field of HIV/AIDS or any other interest which, in the opinion of the appropriate Government, ought to be represented;

(f) a full-time member-HIV/AIDS expert, being a person having special knowledge or practical experience in respect of matters relating to public health, human rights and HIV to be nominated by the appropriate Government in accordance with section 42;

(g) a full-time member-secretary, possessing qualifications, knowledge and experience of various aspects of HIV/AIDS, to be made available by the appropriate Government.

(3) A District HIV/AIDS Authority shall comprise—

(a) a full-time Director, being a person having special knowledge or practical experience in respect of matters relating to HIV/AIDS or a person having knowledge and experience in administering institutions dealing with the matters aforesaid, to be nominated by the Nomination Committee concerned;

(b) three full-time members to be nominated by the appropriate Government;

(c) two members, to be nominated by the appropriate Government from amongst the members of local authorities functioning within the District;

(d) a full-time member being an HIV-positive person to be nominated by the concerned Nomination Committee;

(e) three persons to be nominated by the appropriate Government in accordance with section 42, to represent HIV-positive persons, other protected persons, healthcare providers, women, non-governmental organisations working in the field of HIV/AIDS in that District or any other interest which, in the opinion of the appropriate Government, ought to be represented;

(f) a full-time member-HIV/AIDS expert, being a person having special knowledge or practical experience in respect of matters relating to public health, human rights and HIV to be nominated by the appropriate Government in accordance with section 42;

(g) a full-time member-secretary, possessing qualifications, knowledge and experience of various aspects of HIV/AIDS, to be made available by the appropriate Government.

Nomination  
Committee.

40. (1) The Central, State and Union territory Nomination Committees shall, on the appointed date, and subsequently to fill vacancies in the concerned HIV/AIDS Authority, meet to consider, determine and nominate such persons, as they are required, under section 39, to appoint.

(2) The Central Nomination Committee shall comprise the Prime Minister, the Minister for Health and Family Welfare, the leaders of the opposition in the House of the people and the Council of States, the Chairperson of the National Human Rights Commission and an HIV-positive person appointed by the Central Government in accordance with section 42.

(3) The State Nomination Committee shall comprise the Chief Minister, the Minister in charge of Health in the State, the leaders of the Opposition in the State Legislative Assembly and State Legislative Council, in cases where both Houses exist, the Chairperson of the State Human Rights Commission or where no State Human Rights Commission exists, an expert in public health, HIV/AIDS or human rights as appointed by the State Government in accordance with section 42 and an HIV-positive person appointed by the State Government in accordance with section 42.

(4) (a) The Union territory Nomination Committee shall, where the Union territory has its own legislature, comprise the Chief Minister, the Minister in charge of Health in the Union territory, the leaders of the Opposition in the Union territory Legislative Assembly an expert in public health, HIV/AIDS or human rights as appointed by the Union territory Government in accordance with section 42 and an HIV-positive person appointed by the Union territory Government in accordance with section 42.

(b) The Union territory Nomination Committee shall, where the Union territory has no legislature, be represented by the Central Nomination Committee under sub-section (2).

(5) No appointment by a Nomination Committee shall be invalid merely by reason of any vacancy in such Nomination Committee.

41. (1) The National HIV/AIDS Authority shall be advised by an Advisory Committee on matters relating to the enforcement of this Act, the protection and promotion of rights of protected person, the care, support and treatment of persons living with HIV/AIDS and the prevention and control of HIV/AIDS.

Advisory  
Committee.

(2) The Advisory Committee shall comprise:—

(a) the Central Nomination Committee; and

(b) the following persons to be appointed by the Central Government for a period of two years with eligibility for re-appointment in accordance with section 42,—

(i) two representatives from non-governmental organisations working in the fields of HIV/AIDS or public health;

(ii) a representative of the Indian Council of Medical Research;

(iii) a representative of healthcare providers;

(iv) a representative of HIV-positive persons;

(v) a representative of protected persons;

(vi) a representative of women;

(vii) a representative of children;

(viii) a human rights activist;

(ix) an epidemiologist; and

(x) a public health expert.

(3) The Advisory Committee shall meet once a year.

Appointments  
to HIV/AIDS  
Authority  
and  
Nomination  
Committee  
by  
appropriate  
Government.

42. (1) For any appointment to be made by an appropriate Government under sections 39, 40 and 41, such appropriate Government shall, in the case of a member being appointed upon the constitution of an HIV/AIDS Authority or a Nomination Committee or the Advisory Committee and subsequently on the completion of tenure by a member, thirty days prior to the date upon which a member is to be appointed, call for nominations from all persons for the post through widespread advertisements including through national and local newspapers and the internet.

(2) In cases where the need for appointing a member arises due to factors other than the constitution of an HIV/AIDS Authority or a Nomination Committee or the Advisory Committee or the completion of tenure, the appropriate Government shall commence the process of appointment as specified in sub-section (1) immediately upon such vacancy arising and shall make the final decision as to appointment within thirty days.

(3) In the appointment of any member of an HIV/AIDS Authority, a Nomination Committee or the Advisory Committee, the appropriate Government shall take into consideration the track record of the persons nominated for the post in the field of HIV/AIDS and health and their experience in their respective fields.

(4) The appropriate Government shall make the process of any appointment public immediately upon the person's appointment, including through the internet, and in publicising such appointment shall include the name of the person appointed, their track record and experience and any other factors that were relevant in the appointment.

Tenure of  
office of  
Director and  
other  
members.

43. (1) The Director and every other member of an HIV/AIDS Authority shall hold office for a term of five years from the date on which such person enters office and shall be eligible for reappointment.

(2) A member may relinquish office by giving written notice to the appropriate Government of not less than three months.

(3) The appropriate Government may remove from office any member who—

(a) is, or at any time has been, adjudged as insolvent;

(b) has become physically or mentally incapable of acting as a member of the HIV/AIDS Authority;

(c) has been convicted of any offence or has acquired such financial or other interest which is in the opinion of the appropriate Government likely to affect prejudicially such person's functions as a member of the HIV/AIDS Authority; or

(d) has so abused the position as to render continuation in office detrimental to the public interest: Provided that a member shall not be removed from office without being given a reasonable opportunity of being heard in the matter.

Salary and  
allowances of  
Director and  
members.

44. The salary and allowances payable to, and other terms and conditions of service of, the Director and members shall be such as may be prescribed:

Provided that such salary, allowances and other conditions of service shall not be varied to the disadvantage of the members after appointment.

Meetings of  
the HIV/AIDS  
Authority.

45. (1) The HIV/AIDS Authority shall meet at such time and place and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed.

(2) The Director shall preside at the meetings of the HIV/AIDS Authority.

(3) If for any reason the Director is unable to attend any meeting of the HIV/AIDS Authority, any member of the HIV/AIDS Authority chosen by the members present shall preside at the meeting.

(4) All questions which come before any meeting of the HIV/AIDS Authority shall be decided by a majority of votes of the members of the HIV/AIDS Authority present and

voting and in the event of equality of votes, the Director of the HIV/AIDS Authority or the person presiding at the meeting shall have, and exercise, a second or casting vote.

(5) Every member who is in any way, whether directly, indirectly or personally, concerned or interested in a matter to be decided at a meeting shall disclose the nature of such concern or interest, pecuniary or otherwise, and after such disclosure, such member shall not attend that item of the meeting.

(6) No act or proceeding of the HIV/AIDS Authority shall be invalid merely by reason of,—

(a) any vacancy in, or defect in the constitution of, the HIV/AIDS Authority; or

(b) any defect in the appointment of a person acting as the Director or a member of the HIV/AIDS Authority; or

(c) any irregularity in the procedure of the HIV/AIDS Authority not affecting the merits of the act or proceeding.

46. (1) An HIV/AIDS Authority may appoint such committees as may be necessary for the efficient discharge of its duties and performance of its functions under this Act. Committees.

(2) Persons appointed as members of a committee under sub-section (1) shall be entitled to receive such allowances or fees for attending the meetings of the committee as may be prescribed.

47. Subject to such control and restriction as may be prescribed, the HIV/AIDS Authority may appoint such officers and other employees as may be necessary for the efficient performance of its functions and the method of appointment, the salary and allowances and other conditions of service of such other officers and employees of the HIV/AIDS Authority shall be such as may be prescribed. Officers and other employees of the HIV/AIDS Authority.

48. The Director shall be the Chief Executive of the HIV/AIDS Authority and shall exercise such powers and perform such duties as may be prescribed. Director to be Chief Executive.

49. (1) On the appointed date, the undertakings in relation to the National AIDS Control Organisation, a State AIDS Control Society and where a District AIDS Control Society exists, of that District AIDS Control Society, shall stand transferred to the National HIV/AIDS Authority, the concerned State HIV/AIDS Authority or the concerned District HIV/AIDS Authority, as the case may be. Transfer of Undertakings, etc.

(2) The undertaking of the National AIDS Control Organisation, the concerned State AIDS Control Society or the concerned District AIDS Control Society, which is transferred to, and which vests in the National HIV/AIDS Authority, the State HIV/AIDS Authority or the District HIV/AIDS Authority as the case may be, shall be deemed to include all assets, rights, powers, authorities and privileges and all properties, movable and immovable, real or personal, corporeal or incorporeal, in possession or reservation, present or contingent, of whatever nature and wheresoever situate, including lands, works, cash balances, capital reserves, reserve funds, investments, tenancies, leases and book debts and all other rights and interests arising out of such property as were immediately before the appointed date in the ownership, possession or power of the National AIDS Control Organisation, the concerned State AIDS Control Society or the concerned District AIDS Control Society as the case may be, in relation to its undertakings, whether within or outside India, all books of account and documents relating thereto and shall also be deemed to include all borrowings, liabilities and obligations of whatever kind then subsisting of the National AIDS Control Organisation or the concerned State AIDS Control Society or concerned District AIDS Control Society, as the case may be, in relation to its undertakings.

(3) All contracts and working arrangements subsisting immediately before the appointed date and affecting the National AIDS Control Organisation, the State AIDS Control Society or the District AIDS Control Society, as the case may be, shall, in so far as they relate to their

undertakings, cease to have effect or to be enforceable against the National AIDS Control Organisation, the State AIDS Control Society or the District AIDS Control Society, as the case may be, and shall be of as full force and effect against or in favour of the HIV/AIDS Authority in which the undertaking has vested by virtue of this Act and enforceable as fully and effectually as if instead of the National AIDS Control Organisation or the State AIDS Control Society or the District AIDS Control Society as the case may be, the concerned HIV/AIDS Authority had been named therein or had been a party thereto.

(4) Any proceeding or cause of action pending or existing immediately before the appointed date by or against or in relation to the National AIDS Control Organisation or the State AIDS Control Society or the District AIDS Control Society, as the case may be, in relation to its undertaking may, as from that day, be continued and enforced by or against the HIV/AIDS Authority in which it has vested by virtue of this Act, as it might have been enforced by or against the National AIDS Control Organisation or the State AIDS Control Society or the District AIDS Control Society, as the case may be, if this Act had not been passed, and shall cease to be enforceable by or against the National AIDS Control Organisation or the State AIDS Control Society or the District AIDS Control Society, as the case may be.

(5) With effect from the appointed date, all licenses, permits, quotas and exemptions granted to the National AIDS Control Organisation or the State AIDS Control Society or the District AIDS Control Society as the case may be, or in connection with the affairs and business of the National AIDS Control Organisation or the State AIDS Control Society or the District AIDS Control Society, as the case may be, under any law for the time being in force, shall be deemed to have been granted to the HIV/AIDS Authority in which the undertaking of the National AIDS Control Organisation or the State AIDS Control Society or the District AIDS Control Society, as the case may be, has vested.

(6) Where any exemption from, or any assessment with respect to, any tax has been granted or made or any benefit by way of set off or carry forward, as the case may be, of any unabsorbed depreciation or investment allowance or other allowance or loss has been extended or is available to or in relation to the National AIDS Control Organisation or the State AIDS Control Society or the District AIDS Control Society, as the case may be, under the Income Tax Act, 1961, such exemption, assessment or benefit shall continue to have effect in relation to the HIV/AIDS authority in which the undertaking of the National AIDS Control Organisation or the State AIDS Control Society or the District AIDS Control Society, as the case may be, has vested.

43 of 1961.

(7) Where any payment made by the National AIDS Control Organisation or the State AIDS Control Society or the District AIDS Control Society, as the case may be, is exempted from deduction of the tax at source under any provision of the Income Tax Act, 1961, the exemption from tax will continue to be available as if the provisions of the said Act made applicable to the National AIDS Control Organisation or the State AIDS Control Society or the District AIDS Control Society, as the case may be, were operative in relation to the HIV/AIDS Authority in which the undertaking of the National AIDS Control Organisation or the State AIDS Control Society or the District AIDS Control Society, as the case may be, has been vested.

43 of 1961.

(8) The transfer and vesting of the undertaking or any part thereof in terms of this section shall not be construed as a transfer within the meaning of the Income Tax Act, 1961 for the purposes of capital gains.

43 of 1961.

(9) Any guarantee given for or in favour of or in relation to the National AIDS Control Organisation or State AIDS Control Society or District AIDS Control Society, as the case may be, with respect to any loan or lease finance shall continue to be operative in relation to the HIV/AIDS Authority in which the undertaking of the National AIDS Control Organisation or the State AIDS Control Society or the District AIDS Control Society, as the case may be, has vested by virtue of this Act.

(10) Every officer or other employee of the National AIDS Control Organisation or the State AIDS Control Society or the District AIDS Control Society, except the Director, or the National AIDS Control Organisation or the State AIDS Control Society or the District AIDS Control Society, as the case may be, serving in its employment immediately before the appointed date shall, in so far as such officer or other employee is employed in connection with the undertaking which has vested in the HIV/AIDS Authority by virtue of this Act become, as from the appointed date an officer or other employee, as the case may be, of such HIV/AIDS Authority in which the undertaking has vested and shall hold office or service therein by the same tenure, at the same remuneration, upon the same terms and conditions, with the same obligations and with the same rights and privileges as to leave, passage, insurance, superannuation scheme, provident fund, other funds, retirement, pension, gratuity and other benefits as such officer would have held under the National AIDS Control Organisation or the State AIDS Control Society or the District AIDS Control Society, as the case may be, if its undertaking had not vested in the HIV/AIDS Authority and shall continue to do so as an officer or other employee, as the case may be, of the HIV/AIDS Authority or until the expiry of a period of six months from the appointed date if such officer or other employee does not opt to be the officer or other employee of the HIV/AIDS Authority, within such period.

(11) Where an officer or other employee of the National AIDS Control Organisation or the State AIDS Control Society or the District AIDS Control Society, as the case may be, opts under sub-section (10) not to be in the employment or service of the concerned HIV/AIDS Authority in which the undertaking of the National AIDS Control Organisation or the State AIDS Control Society or the District AIDS Control Society, as the case may be, has vested, such officer or other employee shall continue in the employment of the appropriate Government.

14 of 1947.

(12) Notwithstanding anything contained in the Industrial Disputes Act, 1947 or in any other law for the time being in force, the transfer of the services of any officer or other employee of the National AIDS Control Organisation or the State AIDS Control Society or the District AIDS Control Society, as the case may be, to an HIV/AIDS Authority shall not entitle such officer or other employee to any compensation under this Act or under any other law for the time being in force and no such claim shall be entertained by any court or other authority.

(13) The officers and other employees who have retired before the appointed date from the service of the National AIDS Control Organisation or the State AIDS Control Society or the District AIDS Control Society, as the case may be, and are entitled to any benefits, rights or privileges shall be entitled to receive the same benefits, rights or privileges from the HIV/AIDS Authority in which the undertaking of the National AIDS Control Organisation or the State AIDS Control Society has vested.

(14) The trusts of the Provident Fund or Group Insurance and Superannuation Scheme of the National AIDS Control Organisation or the State AIDS Control Society or the District AIDS Control Society, as the case may be, and any other bodies created for the welfare of officers or employees would continue to discharge their functions in the HIV/AIDS Authority as was being done prior to the appointed date in the National AIDS Control Organisation or the State AIDS Control Society or the District AIDS Control Society, as the case may be, and tax exemptions granted to such schemes shall continue to be applied to the concerned HIV/AIDS Authority.

50. (1) It shall be the function of the HIV/AIDS Authority to:—

- (a) prevent and control the spread of HIV;
- (b) promote and protect the rights of protected persons;
- (c) provide care, support and treatment to HIV-positive persons and those affected by HIV/AIDS;

Functions of  
the HIV/  
AIDS  
Authority.

(d) reduce the vulnerability of individuals and communities to HIV/AIDS;

(e) promote awareness, information and education about HIV/AIDS; and

(f) alleviate the socio-economic and human impact of HIV/AIDS; in India or the State or the Union territory or the District, as the case may be, and to co-ordinate any such programmes undertaken by any other persons or authorities on behalf of the appropriate Government as may be necessary.

(2) The HIV/AIDS Authority may, for the purpose of discharging its duties or performing its functions under this Act enter into any memorandum or arrangement with any agency of any foreign country or any international organisation.

(3) In particular, and without prejudice to the generality of the sub-section (1), the National HIV/AIDS Authority for the whole or any part of India a State HIV/AIDS Authority for the whole or any part of the State, a Union territory HIV/AIDS Authority for the whole or any part of the Union territory, and a District HIV/AIDS Authority for the whole or any part of the District, shall—

(a) institute and implement HIV-related programmes including such programmes as are specified in Schedule II and plan and organise the training of persons, engaged or to be engaged, in HIV-related programmes and strengthen programme management capabilities of the appropriate Government, municipal corporations, panchayat institutions and non-governmental organisations participating in HIV-related programmes;

(b) inquire, *suo motu*, on the request of the appropriate Government or its agencies or any court or in the case of a State or Union territory HIV/AIDS Authority on the direction of the National HIV/AIDS Authority or in the case of a District HIV/AIDS Authority on the direction of the National, State or Union territory HIV/AIDS Authority or on a petition presented to it by any person, into complaints or instances of violation of the provisions of this Act or negligence in the prevention of such violation, by any person, wholly or partly in its jurisdiction, and shall submit the report of such inquiry to the appropriate Government with recommendations as to steps to be taken to remedy the violation and may institute legal proceedings as provided in sub-section (c);

(c) institute, or assist complainants in instituting, or intervene in legal proceedings, involving any allegation of violation of the provisions of this Act in any court or challenge any order of a court where the HIV/AIDS Authority is a party or conduct investigations and make recommendations as directed by the court;

(d) maintain, publish and widely disseminate a list of HIV-related services including care, support and treatment centres and homes, healthcare providers and healthcare institutions providing care and treatment for HIV/AIDS, help lines, testing facilities and legal assistance;

(e) advise and report to the appropriate Government, *suo motu* or when requested by it, on any matters concerning HIV/AIDS or arising in course of the performance of the HIV/AIDS Authority's functions, in particular related to persons below the age of eighteen years and protected persons, including,—

(i) a review of existing and proposed international and national laws and policies and recommendations on the effective implementation or amendment of the same;

(ii) a review of laws and policies affecting persons below the age of eighteen years and children affected by HIV/AIDS including the Juvenile Justice (Care and Protection) Act, 2000 and rules related to foster care and adoption;

(iii) recommendations on the need for new laws and policies;



(iv) a review of the factors that inhibit the enjoyment of rights of persons; and

(v) recommendations for instituting programmes for sensitisation of law enforcement on matters related to this Act.

(f) assess and recommend the strengthening of national, State or local healthcare systems, as the case may be, including related to the improvement of access to healthcare, the primary healthcare system, integrating HIV/AIDS within existing health programmes, improving health education and recommending and assisting in the formulation and implementation of action plans by the appropriate Government to ensure the proper provision of healthcare through public healthcare institutions;

(g) promote, commission and finance research in relation to HIV/AIDS and maintain and update a database of all HIV/AIDS related research being conducted in its jurisdiction;

(h) carry out HIV/AIDS surveillance in accordance with the regulations;

(i) initiate and ensure ongoing interaction with international agencies and other countries to ensure that governmental responses to the HIV/AIDS epidemic will continue to make the best use of assistance, information and knowledge available from the international community;

(j) encourage the efforts of non-governmental organisations and institutions working in the field of HIV/AIDS, human rights and public health including through the provision of material and human resources and allocation of sufficient funding to support, sustain and enhance their capacity and services;

(k) promote the understanding, acceptance and public discussion of rights of protected persons and of the provisions of this Act;

(l) formulate three-year action plans for the carrying out of functions under this Act in consultation with different stakeholders including HIV-positive persons, protected persons, non-governmental organisations and healthcare providers; and

(m) do anything incidental or conducive to the performance of any of the preceding functions or for the purposes of this Act.

51. In addition to the functions set out in section 50, the National HIV/AIDS Authority shall,—

Additional  
Functions of  
National  
HIV/AIDS  
Authority.

(a) formulate and implement a National HIV/AIDS Policy which shall be reviewed, and amended if necessary, every three years after widespread consultation;

(b) establish a committee to examine the impact of HIV/AIDS on women, which shall *inter alia*—

(i) undertake a review of all laws, in particular personal laws;

(ii) determine the manner in, and extent to which such laws discriminate against women;

(iii) recommend the reform and repeal of such laws to the appropriate Government;

(iv) examine the role of women at home and in public life, their sexual, reproductive and economic rights, including their ability to negotiate safer sex and make reproductive choices;

(v) examine strategies to increase educational and economic opportunities for women, sensitise service deliverers on issues related to women, improve healthcare and social support services for women; and

(vi) examine the impact of religious and cultural traditions on women.

(c) in relation to State, Union territory and district HIV/AIDS Authorities—

- (i) supervise their functioning;
- (ii) provide technical assistance and guidance to carry out and sponsor investigations and research relating to HIV/AIDS;
- (iii) co-ordinate their activities and resolve disputes among them; and
- (iv) make budgetary allocations and monitor their use of funds and resources.

(d) formulate, circulate and implement a model national HIV/AIDS policy for the care, support and protection of children affected by HIV/AIDS in educational institutions;

(e) formulate, modify and publish guidelines, policies or standards including in relation to,—

- (i) programmes specified in Schedule II;
- (ii) HIV/AIDS surveillance and counselling;
- (iii) establishment of Voluntary Counselling and Testing Centres;
- (iv) registration and support of non-governmental organisations, the disbursement of monies for this purpose while ensuring that such non-governmental organisations adopt and follow good practices and ethical guidelines in the running and management of their affairs; and
- (v) the avoidance of acts or practices that violate or breach the provisions of this Act.

Additional  
Functions of  
State and  
Union  
territory  
HIV/AIDS  
Authority.

**52.** In addition to the functions set out in section 50, State and Union territory HIV/AIDS Authorities shall within their jurisdictions—

(a) translate the National HIV/AIDS Policy and other guidelines issued by the National HIV/AIDS Authority into local and regional languages, ensure their widespread dissemination and monitor their implementation;

(b) report to the National HIV/AIDS Authority;

(c) in relation to District HIV/AIDS Authorities where such Authorities exist—

- (i) supervise their functioning;
- (ii) co-ordinate their activities and resolve disputes among them; and
- (iii) delegate such of their functions at the District level as they see fit;

(d) establish HIV/AIDS helplines in partnership with NGOs, networks of HIV-positive persons or other stakeholders in each District in accordance with the Regulations;

(e) establish Voluntary Counselling and Testing Centres in accordance with section 17 in every sub-district and at their head offices;

(f) maintain a list of registered counsellors and Voluntary Counselling and Testing Centres which shall be available to the public free of cost;

(g) under directions and guidelines of and in coordination with the National HIV/AIDS Authority establish mechanisms for—

- (i) the registration of Voluntary Counselling and Testing Centres and counsellors;
- (ii) the training of counsellors;

(iii) the provision of HIV-related pre-marital information and counselling services; and

(iv) the setting up of shelter homes for women and children living with HIV/AIDS.

(h) co-ordinate with the National HIV/AIDS Authority and other State and Union territory HIV/AIDS Authorities for the purposes of this Act.

5 of 1908. 53. (1) In proceedings and inquiries before an HIV/AIDS Authority, it shall have all the powers of a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely:— Power of HIV/AIDS Authority.

(a) summoning and enforcing the attendance of witnesses and examine them on oath;

(b) discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses or documents; and

(f) any other matter which may be prescribed.

45 of 1860. (2) The HIV/AIDS Authority shall have the power to require any person, to furnish information on such points or matters as, in its opinion, may be useful for, or relevant to, the subject matter of an inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 and section 177 of the Indian Penal Code, 1860.

1 of 1974. (3) The HIV/AIDS Authority or any other officer, not below the rank of a Gazetted Officer, specially authorised in this behalf by the HIV/AIDS Authority may enter any building or place where the HIV/AIDS Authority has reason to believe that any document relating to the subject matter of an inquiry may be found, and may seize any such document or take extracts or copies therefrom subject to the provisions of section 100 of the Code of Criminal Procedure, 1973, in so far as it may be applicable.

54. All orders and decisions of the HIV/AIDS Authority shall be authenticated by the signature of the Director or any other member authorised by the HIV/AIDS Authority in this behalf. Authentication of orders of HIV/AIDS Authority.

55. (1) The HIV/AIDS Authority shall, within one hundred and eighty days of its constitution and establishment, notify a voluntary, graded rating and compliance system for all organisations including companies, institutions and non-governmental organisations in its jurisdiction, which shall provide *inter alia*: HIV/AIDS Authority to monitor compliance of Act.

(a) for the listing of organisations with the HIV/AIDS Authority;

(b) formats for reporting compliance with the provisions of this Act; and

(c) a public notification system for organisations who rate well on the compliance of this Act.

(2) Based on the rating and compliance system, the HIV/AIDS Authority shall, on an annual basis, rate organisations on their compliance with the provisions of this Act and shall report to the appropriate Government such organisations that rate well on compliance.

(3) Based on the report of the HIV/AIDS Authority under sub-section (2), the appropriate Government shall accord priority and preference to such organisations that rate well on compliance in relation to various matters including the granting of contracts, licences, funding and resource allocation.

(4) The HIV/AIDS Authority shall also report to the appropriate Government such organisations that have been convicted of offences or awarded adverse orders in terms of this Act or those which may have been given a poor rating as 'HIV unfriendly' in relation to various matters including the granting of contracts, licences, funding and resource allocation.

(5) The HIV/AIDS Authority shall publish for wide circulation its rating and compliance system, the names of organisations that perform well on the rating system and those that are given a poor rating as 'HIV unfriendly'.

HIV/AIDS  
Authority to  
Consult.

**56. (1)** The HIV/AIDS Authority shall—

(a) call upon such experts, from the fields of public health, human rights, law and HIV/AIDS or from any other discipline as it deems necessary to assist it in the conduct of an inquiry under clause (b) of sub-section (3);

(b) ensure, including through political and financial support, that consultation with all stakeholders including HIV-positive persons, protected persons, healthcare providers, persons working in the field of HIV/AIDS, public health experts and human rights organisations occurs in all phases of HIV/AIDS policy design, programme implementation and evaluation;

(c) establish formal and regular mechanisms to facilitate ongoing dialogue with and input from such community representatives into HIV-related government policies and programmes including through regular reporting by community representatives to the various government, parliamentary and judicial branches, joint workshops with community representatives on policy, planning and evaluation of State responses and through mechanisms for receiving written submissions from the community;

(d) ensure a greater involvement of HIV-positive persons, other protected persons, non-governmental organisations, women, children, civil society and healthcare providers in the formulation and implementation of HIV-related policies, including through an initiative to strengthen the capacity and co-ordination of networks of people living with HIV/AIDS and community based organisations; and

(e) work with different stakeholders for the purposes of the performance of its functions.

(2) All policies, programmes and guidelines formulated by the HIV/AIDS Authority shall be evidence-based, formulated in a transparent manner and through consultation as provided in sub-section (1) and shall be open to public scrutiny.

(3) The HIV/AIDS Authority shall continuously collect information on HIV/AIDS, human rights and health and use this information as a basis for policy and programme development and reform.

Duty to  
publish  
information.

**57. (1)** The HIV/AIDS Authority shall publish, including through the Internet, and make available to all persons, all reports and minutes of its meetings and the meetings of its Committees and where applicable those of the Advisory Committee and the concerned Nomination Committee, its policies, programmes, guidelines, standards, all data relating to care, support and treatment, budgetary allocations, statements of audit and accounts and reports of the Comptroller and Auditor General of India related to its functioning.

(2) Every person shall have the right to information from the HIV/AIDS Authority and this information shall be subject to the maintenance of confidentiality in relation to protected persons.

Appropriate  
Government  
to consider  
HIV/AIDS  
Authority  
reports.

**58.** The appropriate Government shall consider the reports and recommendations of the HIV/AIDS Authority, in particular in relation to review of laws and policies relating to women, and within three months of their submission, shall, together with its comments, views and the action it proposes to take in relation to such reports and recommendations, lay the same before the concerned legislature for their action and publish and make available the same to all persons.

59. (1) The appropriate Government may, after due appropriation made by Parliament or the concerned legislature as the case may be, by law in this behalf, make in each financial year such contributions to the HIV/AIDS Authority as it may think necessary to enable the HIV/AIDS Authority to perform its functions under this Act.

Budgetary provisions.

(2) Each HIV/AIDS Authority shall have its own fund, and all sums which may, from time to time, be paid to it by the appropriate Government, and in the case of the State, Union territory and District HIV/AIDS Authorities, by the National HIV/AIDS Authority and all other receipts by way of gifts, grants, donations, benefactions, fees or otherwise of that HIV/AIDS Authority shall be carried to the fund of the HIV/AIDS Authority and all payments by the HIV/AIDS Authority shall be made from there.

(3) The HIV/AIDS Authority may expand such sums as it thinks fit for performing its functions under this Act and such sums shall be treated as expenditure payable out of the fund of that HIV/AIDS Authority.

(4) The HIV/AIDS Authority shall during each financial year, prepare, in such form and at such time as may be prescribed, a budget in respect of the financial year next ensuing showing the estimated receipt and expenditure, and copies thereof shall be forwarded to the appropriate Government and its supervising HIV/AIDS Authority.

60. (1) The HIV/AIDS Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the appropriate Government in consultation with the Comptroller and Auditor-General of India.

Accounts and Audit.

(2) The accounts of the HIV/AIDS Authority shall be audited by the Comptroller and Auditor-General of India every three years and any expenditure incurred in connection with such audit shall be payable by the HIV/AIDS Authority to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India or any person appointed by the Comptroller and Auditor-General of India in connection with the audit of the accounts of the HIV/AIDS Authority under this Act shall have the same rights and privileges in connection with such audit as the Comptroller and Auditor-General of India generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the HIV/AIDS Authority.

(4) The accounts of the HIV/AIDS Authority as certified by the Comptroller and Auditor-General or any other person appointed by the Comptroller and Auditor-General of India in this behalf, together with the audit report thereon shall be forwarded annually to the Appropriate Government by the HIV/AIDS Authority and the appropriate Government shall cause the audit report to be laid as soon as may be after it is received before the concerned legislature and shall publish the same for wide circulation.

## CHAPTER XII

### INSTITUTIONAL OBLIGATIONS

61. The provisions of this Chapter shall be applicable to all institutions comprising twenty or more persons.

Application.

62. Every person who is in charge of, or responsible to an institution for the conduct of the activities of such institution, or both, shall ensure compliance by such institution with the provisions of this Act on the commencement of this Act.

General Responsibility of Institutions.

63. (1) Every institution shall appoint a person of senior rank with full administrative powers, working full time in the institution, as the Complaints Officer, who shall, on a

Grievance Redressal Mechanism.

day-to-day basis, deal with complaints of violations of the provisions of this Act by or in the institution, in such manner as may be prescribed:

Provided that where an institution carries on its activity in one or more places with twenty or more persons in any of such additional places, a separate Complaints Officer shall be appointed for each of such places.

(2) Every person with a grievance about the violation of the provisions of this Act by or in an institution has the right to approach the Complaints Officer to attend to such grievance and shall be informed of such right by the institution.

(3) The Complaints Officer, may inquire *suo motu*, and shall inquire, upon a complaint made by any person, into violation of the provisions of this Act by the institution or any person in the institution.

(4) The Complaints Officer shall act in an objective and independent manner when inquiring into complaints made under this Chapter.

(5) The Complaints Officer shall inquire into and decide a complaint promptly and in any case within seven working days:

Provided that in cases of emergency the Complaints Officer shall decide the complaint within one day.

(6) The Complaints Officer, if satisfied, that a violation of the Act has taken place as alleged in the complaint, shall first direct the institution to take measures to rectify the breach or violation complained of, then counsel the person alleged to have committed the act and require such person to undergo training and social service, and upon subsequent violations shall recommend to the institution to, and the institution shall, initiate disciplinary action against such person.

(7) The Complaints Officer shall inform the complainant of the action taken in relation to the complaint and shall be responsible for ensuring that the complaints, their nature and number and the action taken are published on the institution's website or web page where such a website or web page exists and are reported to the concerned HIV/AIDS Authority on a six-monthly basis:

Provided that the Complaints Officer shall ensure the maintenance of confidentiality of complainants and parties to a complaint.

HIV/AIDS  
policy.

64. (1) The National HIV/AIDS Authority shall within ninety days of its constitution and establishment, notify model HIV/AIDS policies for institutions formulated in consultation with different stakeholders including HIV-positive persons and persons working in the field of HIV/AIDS.

(2) The model HIV/AIDS policies as may be applicable and as may be amended and updated from time to time by the National HIV/AIDS Authority, shall be deemed to be adopted by every institution upon their notification.

(3) The text of the HIV/AIDS policy shall be conveyed to all persons working in the institution and shall be prominently posted by the persons incharge of or responsible to the institution, or both, in English and in the language understood by the majority of persons working in or accessing such institution on special boards to be maintained for the purpose at or near the entrance through which the majority of the persons working in or accessing the services of the institution enter such institution.

(4) (a) The notice in sub-section (3) shall state the manner in which copies of the HIV/AIDS Policy may be obtained and persons working in or accessing the services of the institution shall be entitled to a copy of such policy free of charge.

(b) The HIV/AIDS policy of all institutions shall be available to all members of the public for a nominal fee.

(c) In the case of educational institutions, learners and thier parents or guardians shall be given a copy of the HIV/AIDS policy free of charge immediately upon admission of the learner to the institution.

(5) The institution shall conduct annual training sessions for persons working in such institution in understanding and implementing the HIV/AIDS policy of the institution.

(6) The National HIV/AIDS Authority shall ensure that the institutional HIV/AIDS Policy is reviewed and if necessary, updated and amended on an annual basis.

65. Nothing contained in this Chapter prohibits, limits or otherwise restricts the right of a person to other remedies provided under this Act or any other law for the time being in force to address violations of the provisions of this Act.

Right of  
Redressal.

### CHAPTER XIII

#### DUTIES OF STATE

66. (1) In compliance with the Constitution and India's commitments under international conventions to which it is party, the appropriate Government shall—

State  
obligations.

(a) ensure the right of access to and equitable distribution of health facilities, goods and services including essential medicines on a non-discriminatory basis;

(b) based on epidemiological evidence and through a participatory and transparent process, adopt and implement a national public health strategy and plan of action, to be periodically reviewed, addressing the health concerns of the whole population and including methods such as right to health indicators and benchmarks, by which progress can be closely monitored; and

(c) enact, review and amend legislation to promote the rights of protected persons and to establish a legislative framework in consonance with the objectives of this Act.

(2) In order to fulfil its obligations under this Act, the appropriate Government shall—

(a) take measures to develop and promote awareness among protected persons of their rights and duties under this Act; and

(b) take measures to develop and implement programmes in order to promote the rights of protected persons under this Act including promoting and ensuring the greater involvement of HIV-positive persons and protected persons in programmes, action plans, policy formulation, decision-making processes and implementation of plans under this Act in particular and in the field of HIV/AIDS in general.

67. (1) The Central Government shall, in co-ordination with the HIV/AIDS Authorities establish an effective national framework to respond to HIV/AIDS which ensure a co-ordinated, participatory, transparent and accountable approach, integrating HIV/AIDS policy and programme responsibilities, across all branches of Government.

Programmatic  
and  
Implementational  
Obligations.

(2) Each Central, State and local ministry shall ensure that HIV/AIDS and human rights are integrated into all its relevant plans and activities, including ministries and departments related to—

(a) Education;

(b) Law and justice, including police and corrective services;

(c) Science and research;

(d) Employment and public service;

(e) Welfare, social security and housing;

(f) Immigration, indigenous populations, foreign affairs and development cooperation;

(g) Health;

(h) Treasury and finance; and

(i) Defence, including armed services.

Interaction  
with  
International  
Community.

68. (1) The Central Government shall initiate and ensure the ongoing interaction with neighbouring and other States to ensure that governmental responses to the HIV/AIDS epidemic will continue to make the best use of assistance available from the international community and such interaction shall, *inter alia*, reinforce, cooperation and assistance to areas related to HIV/AIDS and human rights, in particular relating to access to treatment.

(2) The Central Government shall promote HIV-related human rights in international forums and ensure that they are integrated into the policies and programmes of International Organizations.

(3) The Central Government shall consider international guidelines, as they develop, in the formulation of HIV-related policies and programmes in India.

#### CHAPTER XIV

##### SPECIAL PROVISIONS

Women and  
health.

69. (1) The State shall develop and implement a comprehensive national strategy for promoting women's right to health throughout their life span that includes interventions aimed at the prevention and treatment of diseases affecting women, as well as policies to provide access to a full range of high quality and affordable healthcare, including sexual and reproductive healthcare services and policies that ensure the education and empowerment of the girl child.

(2) In order to promote better health for women, the State shall integrate a gender-based approach that recognises that biological and socio-cultural factors play a significant role in influencing the health of women, in its health-related policies, planning, programmes and research.

(3) The State shall ensure the disaggregation of health and socio-economic data according to sex for the purpose of identifying and remedying inequalities in healthcare access and provision.

Right of  
Residence.

70. Every protected person who is a woman or who is a person below the age of eighteen years shall have the right to reside in the shared household, the right not to be excluded from the shared household or any part of it and the right to enjoy and use the facilities of such shared household in a non discriminatory manner.

*Explanation.*— "shared household" means a household where a person lives or at any stage has lived in a domestic relationship either singly or along with another person and includes such a household whether owned or tenanted either jointly or singly, any such household in respect of which either person or both, jointly or singly, have any right, title, interest or equity and includes a household which may belong to a joint family of which either person is a member, irrespective of whether either person has any right, title or interest in the shared household.

Registration  
of marriages.

71. (1) In addition to and not in derogation of existing laws,—

(a) all marriages solemnised after the commencement of this Act shall be registered in such manner as may be prescribed; and

(b) a marriage that is not registered after two years from the commencement of this Act or one year from the date of its solemnisation, whichever is later, shall be voidable at the option of the woman; and

(c) in the case of a marriage that has been declared void under this section, all rights and obligations including the right to maintenance, the right of legitimacy of children who would have been legitimate had the marriage not been dissolved and rights related to property, shall be such as they would have been had the marriage been dissolved under the applicable law.



(2) The appropriate Government shall appoint Registration Officers in every sub-district in the country.

(3) The Central Government in consultation with the State Governments shall within three hundred and sixty days of the commencement of this Act, prescribe the procedure for registration of marriages and shall design and implement a system for indexing and centralising marriage records.

(4) No marriage shall be registered unless the Registering Officer is satisfied that the persons intending to marry have received HIV-related IEC in accordance with section 72 of this Act.

72. (1) The National HIV/AIDS Authority shall, within ninety days of its constitution and establishment, formulate guidelines, content and protocols for the provision of HIV-related IEC before marriage.

HIV-related  
IEC before  
marriage.

(2) The appropriate Government shall establish a Counselling Centre at each Marriage Office in each district, which shall implement the protocols formulated under sub-section (1) above.

(3) All persons intending to get married or whose marriage has not been registered shall receive face to face and one-on-one HIV/AIDS related information provided and conveyed in an effective and interactive manner and shall be offered HIV/AIDS related counselling.

*Explanation.*— For the purposes of this section, HIV-related IEC includes information related to sexual health, contraception, condom usage, sexuality, the methods of transmission of HIV and other sexually transmitted infections, and voluntary HIV testing.

73. (1) Without prejudice to the generality of the provisions of this Act and notwithstanding anything contained in any law for the time being in force, an HIV-positive woman who is pregnant shall have the right to receive such counselling and information as to enable her to make a decision about her pregnancy, whether or not to undertake HIV-related treatment and in relation to other matters affecting her health and pregnancy.

HIV-positive  
women who  
are pregnant.

(2) No woman who is pregnant and a protected person shall be subject to forced sterilisation or abortion.

(3) The National HIV/AIDS Authority shall within sixty days of its constitution and establishment, develop protocols for the testing, treatment and counselling of HIV-positive women who are pregnant and every healthcare institution shall implement such protocols immediately upon their notification.

(4) Protocols formulated under sub-section (3) shall provide *inter alia* counselling guidelines in relation to care and treatment for the HIV-positive woman and her child, that informed consent must form the basis for the woman's individual decision, recognition of the right of the woman to decide, that the decision to use any HIV/AIDS related treatment during pregnancy should be made by the woman following discussions with her healthcare provider regarding the benefits and risks to her and her foetus and counselling on feeding and infant milk substitutes.

74. (1) The Central Government shall, within three hundred and sixty days of the commencement of this Act, formulate, notify and implement Regulations specifying protocols for the counselling and treatment of survivors of sexual assault and for the training of healthcare providers and other service providers in the implementation of such protocols.

Sexual assault  
protocols.

(2) The appropriate Government shall, within seven hundred and twenty days of the commencement of this Act, establish one or more sexual assault crisis centres in each district in its jurisdiction.

(3) in fulfilling its obligations under sub-section (1) and (2), the appropriate Government shall consult different stake holders including women's groups, child rights groups, groups working on sexuality, sexual health, HIV/AIDS, healthcare providers and forensic experts.

(4) Every survivor of sexual assault, whether or not they have reported the sexual assault to law enforcement agencies, shall have access to the following services on a confidential basis,—

(a) counselling;

(b) prevention and management of sexually transmitted infections including access to testing and prophylactic treatment;

(c) prevention, treatment and management of other medical conditions or injuries associated with the sexual assault;

(d) HIV/AIDS related counselling and treatment if required and in the best interest of the survivor;

(e) follow up treatment and care; and

(f) referrals:

Provided that where the survivor of sexual assault is a person below the age of twelve years, the healthcare or other service provider under whose care such person is, may encourage the involvement of a parent or guardian, unless it is detrimental to and interferes with the progress and care of the survivor, in which case the consent of such parent or guardian for the provision of services shall not be required.

(5) Notwithstanding anything contained in any law for the time being in force, no healthcare or other service provider or person in charge of an institution providing services to a survivor of sexual assault shall report or release information regarding the assault or the survivor without the written informed consent of the survivor.

*Explanation I.*—For the purposes of this section, sexual assault is any non-consensual contact with a sexual purpose including an offence against any person under section 376, section 376A, section 376B, section 376C, section 376D and section 377 of the Indian Penal Code, 1860 whether or not such an act is recognised as a crime by law for the time being in force and whether or not it is reported to the police.

45 of 1860.

*Explanation II.*—For the purposes of this section sexual assault includes non-consensual sexual contact by a man with his wife.

Persons in  
the Care or  
Custody of  
the State.

75. (1) Every person who is in the care or custody of the State shall have the right to HIV prevention, counselling, testing and treatment services.

(2) The State shall, within one hundred and eighty days of the commencement of this Act, introduce strategies for risk reduction including age appropriate information, education and communication for persons below the age of eighteen years, sexual health information, condoms, needle exchange and drug substitution programmes for all persons in its care or custody.

(3) A person in the care or custody of the State who has been exposed to the risk of HIV transmission, shall be referred immediately to a State healthcare institution or a sexual assault crisis centre, as the case may be, for HIV-related counselling, treatment or other services and shall be entitled to, if recommended, post exposure prophylaxis and HIV related treatment from the State.

(4) Every person in the care or custody of the State shall be entitled to receive their complete medical records upon their release or discharge.

*Explanation.*—For the purposes of this section, persons in the care or custody of the State include persons convicted of a crime and serving a sentence, persons awaiting trial,

56 of 2000  
104 of 1956.

person detained under preventive detention laws, persons under the care or custody of the State under the Juvenile Justice (Care and Protection of Children) Act, 2000, the Immoral Traffic (Prevention) Act, 1956, and persons in the care or custody of State run homes and shelters.

76. (1) The State shall ensure access to child-friendly information about preventive and health-promoting behaviour and support to families and communities in implementing these practices.

Children.

(2) The State shall adopt effective and appropriate measures to abolish harmful practices affecting the health of children, particularly girls, including early marriage and preferential feeding and care of male children.

(3) The State shall provide a safe and supportive environment for young persons, that ensures the opportunity to participate in decisions affecting their health, to build life-skills, to acquire appropriate information, to receive counselling and to negotiate the health behaviour choices they make.

(4) The State shall ensure the development of youth-friendly healthcare, which respects confidentiality and privacy and includes appropriate sexual and reproductive health services.

(5) In all policies and programmes aimed at guaranteeing the right to health of children and young persons their best interests shall be a primary consideration and in the formulation of such policies and programmes, the State shall consult children and non-governmental organisations working with children at national, state and local levels.

77. (1) The appropriate Government shall, in consultation with health professionals and organisations working with children affected by HIV/AIDS, formulate guidelines and train healthcare providers on various aspects of care, support and treatment of children affected by HIV/AIDS, including in relation to psychological care and HIV-related treatment.

Children  
affected by  
HIV/AIDS.

(2) The appropriate Government shall ensure that children affected by HIV/AIDS can access educational institutions and shall formulate and implement programmes to address barriers to education including school fees and other costs.

78. (1) The appropriate Government shall protect the property of children affected by HIV/AIDS.

Protection of  
Property of  
Children  
affected by  
HIV/AIDS.

(2) The Central Government shall, within ninety days of the commencement of this Act frame rules for the protection of property of children affected by HIV/AIDS.

(3) Parents or guardians of children affected by HIV/AIDS, or any person acting in their best interest, or a child affected by HIV/AIDS, may approach the Child Welfare Committee for the safe keeping and deposit of documents related to the property rights of such child or to make complaints relating to the threat of such child being dispossessed, actual dispossession or trespass into such child's house even in the absence of documents related to the property rights of such child.

(4) The Child Welfare Committee shall properly maintain and protect all such documents and shall ensure the maintenance of confidentiality of all protected persons.

(5) The Child Welfare Committee shall pass appropriate orders in the best interests of children affected by HIV/AIDS, including orders to preserve the property of such children, to make investments of the property or to take possession of documents related to the property where both the parents or legal guardian of such children have either died or are incapacitated.

(6) The Child Welfare Committee shall take the assistance of different stakeholders including HIV-positive persons, persons working in the field of HIV/AIDS, child-line organizations and non-governmental organisations working with children in such matters.

*Explanation.*—"Child Welfare Committee" means a committee set up under the Juvenile Justice (Care and Protection of Children) Act, 2000.

56 of 2000.

Recognition  
of  
Guardianship  
of older  
sibling.

79. (1) Notwithstanding anything contained in any law for the time being in force, a person below the age of eighteen years who is the managing member of a family affected by HIV/AIDS shall be competent to act as guardian of any other persons below the age of eighteen years who are members of such family for the following purposes:—

- (a) admission to educational institutions;
- (b) care and protection;
- (c) treatment;
- (d) operating bank accounts;
- (e) managing property; and
- (f) for all other purposes that may be required to discharge duties as a guardian.

*Explanation.*—For the purposes of this section, a family affected by HIV/AIDS, is one where both parents or the legal guardian is incapacitated due to HIV-related illness or AIDS, those living in households of children orphaned by AIDS or if they are not orphaned, then the legal guardian or parents are unable to discharge their duties in relation to such children.

De-Facto  
guardian.

80. (1) Notwithstanding anything contained in any other law for the time being in force, a person who has no parental responsibilities and rights in respect of a child but who voluntarily cares for the child either indefinitely, temporarily or partially, including a care-giver who otherwise has no parental responsibilities and rights in respect of a child, shall, while the child is in that person's care, have the duty to —

- (a) safeguard the child's health, well-being and development; and
- (b) protect the child from maltreatment, abuse, neglect, degradation, discrimination, exploitation and any other physical or mental harm or hazards.

(2) A person referred to in sub-section (1) may exercise parental responsibilities and rights reasonably necessary to comply with sub-section (1), including the right to consent to HIV/AIDS related treatment of, or other healthcare service for, the child if such consent cannot reasonably be obtained from the parent or primary care-giver of the child or the concerned child.

Living wills,  
stand by  
guardianship  
and  
testamentary  
guardianship.

81. (1) Notwithstanding anything contained in any law for the time being in force, a parent or legal guardian of a child affected by HIV/AIDS may appoint, by making a will, an adult person who is a relative or friend, or a person below the age of eighteen years who is the managing member of the family affected by HIV/AIDS to act as legal guardian immediately upon the parent or legal guardian's incapacity or death.

(2) Nothing in this section shall divest a parent or legal guardian of their rights, and the guardianship referred to in sub-section (1) shall cease to operate upon the parent or legal guardian regaining capacity.

(3) Parent or legal guardians of children affected by HIV/AIDS may make a will appointing a guardian for care and protection of such children and for the property that such children would inherit or which is bequeathed through the will.

## CHAPTER XV

### SPECIAL PROCEDURES IN COURT

Suppression  
of identity.

82. (1) In any legal proceeding in which a protected person is a party or such person is an applicant, the court, on an application by such person, that it is in interest of justice, may pass any or all of the following orders:

(a) that the proceeding or any part thereof be conducted by suppressing the identity of the applicant by substituting the name of such person with a pseudonym in the records of the proceedings in such manner as may be prescribed;

(b) that the proceeding or any part thereof may be conducted in camera; and

(c) restraining any person from in any manner publishing any matter leading to the disclosure of the name or status or identity of the applicant.

(2) Any proceeding where an order under sub-section (1) is passed shall be conducted in such manner as may be prescribed.

83. (1) In any legal proceeding concerning or relating to an HIV-positive person, the court shall take up and dispose off the proceeding on a priority basis.

Priority.

(2) In such a legal proceeding, the court shall, as soon as possible, but not later than one hundred and twenty days of the institution of the proceedings, fix a timetable for the final hearing and disposal of the proceeding in consultation with the parties.

(3) The timetable so fixed shall take into account any arbitration, mediation or settlement that may be ordered or the evidence that may be taken and the final oral and written arguments and judgement that may be pronounced, such that the time taken for disposing of the entire proceeding, from the date of its institution till final disposal shall, in a proceeding which requires evidence to be taken be not more than three years, and in any other case be not more than two years.

(4) The timetable for a trial in any legal proceeding concerning or relating to an HIV-positive person shall be so fixed that it is conducted on a daily basis.

(5) Evidence in such proceedings shall, to the extent possible, be taken before a commissioner as provided in Order XVIII of the Code of Civil Procedure, 1908.

5 of 1908.

(6) Any interim application made in such a proceeding shall not affect the timetable or be a basis of enlarging the time fixed for the final disposal of the proceeding.

(7) Any party not adhering to the timetable, except in cases of illness of the HIV-positive person, who is party to or a witness in the proceedings, shall be liable to pay costs of not less than one thousand rupees per day of the delay to the legal aid fund of the concerned court:

Provided that each party to the proceeding shall be entitled to three adjournments during the course of the proceedings to use as they choose to.

(8) All interlocutory applications in any such proceedings shall be disposed off in a summary manner on the basis of document before the court without prejudicing the rights of the parties or delaying the final disposal of the main proceedings.

(9) In a proceeding in which an HIV-positive person is a party, if the judge presiding over the matter is transferred, retires or otherwise vacates the court, the judge who has the power to transfer cases in such court, shall within thirty days transfer the proceeding to another judge.

*Explanation.*—For the purposes of this section 'judge' includes the President, Principal Judge, Chief Justice, Chief Metropolitan Magistrate or Chief Judge of the concerned court.

84. (1) In any maintenance application filed by or on behalf of a protected person under any law for the time being in force, the court shall on the first date after the application is filed, consider the application for interim maintenance and have the power to grant ad hoc maintenance on the basis of the application alone until the disposal of or further orders in, the application.

Maintenance.

(2) In passing any order of maintenance the court shall take into account medical costs and other HIV-related costs that may be incurred by the application.

Sentencing.

85. In passing any orders relating to sentencing, the HIV-positive status of the person in respect of whom such an order is passed shall be a relevant factor to be considered by the court to determine the custodial facility that the person shall be transferred to based on the availability of proper healthcare services at such facility.

Powers of Court.

86. (1) Notwithstanding any other law for the time being in force, in the adjudication or prosecution of any proceedings whether civil or criminal, which are instituted in terms of or under this Act a court shall, in addition to any other order that it may pass, order the person who has committed a breach of this Act to undergo a fixed period of counselling related to the breach committed or a fixed period of social service.

(2) Notwithstanding any other law for the time being in force, in the adjudication of any proceedings, which are instituted in terms of or under this Act a court may pass appropriate order in the circumstances of the case to:—

(a) prevent breaches of the provisions of this Act; or

(b) redress breaches of the provisions of this Act by directing:

(i) specific steps, special measures or affirmative actions or both to be taken;

(ii) the award of damages including specific, general, aggravated and exemplary damages with interest for past and future losses, personal injuries, and injury to reputation or feelings;

(iii) the withdrawal of, or ceasing and desisting from, committing breaches of this Act;

(iv) the employer of a person who has committed a breach of this Act to initiate disciplinary action against such person;

(v) the employer of the person who has committed a breach of this Act to put the matter in the employee's Annual Confidentiality Report;

(vi) the inclusion of the matter in the Annual or other report of the person who has committed a breach of this Act that is available to the public and that is filed with regulatory authorities, where such person is an institution;

(vii) the person who has committed a breach of this Act to undergo an audit of specific policies or practices as may be determined by the court, where such person is a registered company, institution, society or other body;

(viii) an appropriate order of a deterrent nature, including a recommendation to the appropriate authority, to suspend or revoke the licence of the person who has committed a breach of this Act;

(ix) any person who has committed a breach of this Act to make regular progress reports to the court regarding the implementation of the court's order;

(x) the Registrar of the court to report the matter where a criminal offence is disclosed during the course of the proceedings, to the concerned police station having jurisdiction for the possible institution of criminal proceedings; or

(xi) any other order as may be necessary in the interests of justice.

(3) In a proceeding relating to discrimination in employment under this Act, the court shall have the power to pass any or all of the following orders:

(a) that the person discriminated against be employed;

(b) that the person discriminated against be reinstated;

(c) that the person who has discriminated make arrangements for the reasonable accommodation of the person discriminated against;

(d) the payment of wages, salary, income, allowances, benefits, perquisites and privileges that may have been lost on account of non-employment or termination; and

(e) award special, general and exemplary damages on account of the non-employment, termination, emotional distress and pain or loss of reputation.

87. (1) An HIV/AIDS Authority or any person may petition a court in relation to any institution with a record of continuous violations of the provisions of this Act.

Power of Court to order systemic audits.

(2) Based upon a petition under sub-section (1), a court may appoint the concerned HIV/AIDS Authority or such other persons as it deems fit to conduct an audit of such institution to determine the causes of the continuous violations of the Act and based on the report of such audit may make such orders as may be necessary to address the systemic violations of the Act including any or all of the following orders:

(a) rectification of the breaches of the Act;

(b) initiation of disciplinary proceedings; and

(c) training and sensitisation programmes for all or any persons in such institution.

88. When the question is whether a protected person has been discriminated against under this Act and it is shown that the person against whom such discrimination is alleged to have taken place is a protected person and that the act or omission alleged as being discriminatory took place, the court shall presume, that such act or omission is discrimination under this Act and—

Presumption as to discrimination.

(a) the respondent must prove, on the facts before the court, that the discrimination did not take place as alleged; or

(b) the respondent must prove that the conduct is not based on one or more of the prohibited grounds:

Provided that the presumption as to non-existence of undue hardship under clause (ii) of sub-section (a) of section 4 shall operate without prejudice to the presumption under this provision.

89. Nothing contained in this law prohibits, limits or otherwise restricts the jurisdiction of civil and criminal courts to address violations of the provisions of this Act.

Jurisdiction of Courts.

## CHAPTER XVI

### PENALTIES

90. Notwithstanding any action that may be taken under any law for the time being in force, whoever contravenes the provisions of section 5 shall be punished with imprisonment of either description for a term which shall not be less than three months but which may extend to two years and with fine that may extend to one lakh rupees or both.

Penalty for contravention of provisions of section 5.

91. Notwithstanding any action that may be taken under any law for the time being in force, misinformation on HIV/AIDS prevention and control, including through false and misleading advertising and claims in any media or the promotional marketing of drugs, devices, agents, or procedures without prior approval from the Drugs Controller General of India and the requisite medical and scientific basis, including markings and indications in drugs and devices and agents, purporting to be a cure or fail safe prophylactic for HIV/AIDS, shall be punished with imprisonment of either description for a term that shall not be less than three months but may extend to two years or a fine that shall not be less than twenty thousand rupees but may extend to one lakh rupees or both.

Penalty for misleading information.

Penalty for contravention of sub-section (4) of section 21 by public servant.

Failure to comply with orders of Health Ombud.

92. A public servant who contravenes the provisions of sub-section (4) of section 21 shall, on conviction, be punished with simple imprisonment for a term which may extend to one year and with fine that may extend to one lakh rupees.

93. (1) Whoever fails to comply with any order given by a Health Ombud within such time as may be specified in such order shall, on conviction, be liable to pay a fine which may extend to ten thousand rupees and in case the failure continues, with an additional fine which may extend to five thousand rupees for every day during which such failure continues after the conviction for the first such failure.

(2) If the failure referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall, on conviction, be punished with imprisonment of either description for a term which shall not be less than three months but which may extend to one year and with fine that shall not be less than ten thousand rupees but which may extend to one lakh rupees.

Penalty for contravention of provisions of clause (c) of sub-section (1) of section 82.

Offences by Companies.

94. Notwithstanding any action that may be taken under any law for the time being in force, whoever contravenes an order under clause (c) of sub-section (1) of section 82 shall be punished with simple imprisonment for a term that may extend to one year or with a fine that may extend to one lakh rupees.

95. (1) Where an offence under this Act has been committed by an institution, every person who at the time the offence was committed was in charge of, and was responsible to the institution for the conduct of its activities, as well as the institution, shall be deemed to be guilty of the offences and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if it is proved that the offence was committed without the person's knowledge or that such person exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by an institution and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the institution, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

*Explanation.*—For the purposes of this section "director" in relation to a firm means a partner in the firm.

Offences by Government Departments.

96. Where an offence under this Act has been committed by any Department of Government, the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this section shall render such Head of the Department liable to any punishment if it is proved that the offence was committed without such person's knowledge or that such person exercised all due diligence to prevent the commission of such offence.

Court competent to try offences under this Act and take cognizance of offence.

97. No court other than the court of a Judicial Magistrate of First Class shall take cognizance of or try an offence under this Act.



98. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, offences under this Act shall be cognizable and bailable.

Offences to be cognizable and bailable.

99. All offences under this Act shall be tried summarily in the manner provided for summary trial under the Code of Criminal Procedure.

Offences under the Act to be tried summarily.

## CHAPTER XVII

### MISCELLANEOUS

100. (1) The provisions of this Act shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

Act to have overriding effect.

(2) The provisions of this Act shall have overriding effect notwithstanding anything to the contrary contained in the memorandum or articles of a company, or in any agreement executed by it, or in any resolution passed by the company in general meeting or by its board of directors, whether the same be registered, passed or executed, as the case may be before or after the commencement of this Act.

(3) Any provision contained in the memorandum, articles, agreement or resolution aforesaid shall to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.

101. The Director, members, officers and other employees of the HIV/AIDS Authority shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860.

Member and Staff of HIV/AIDS Authorities etc. to be public servants.

45 of 1860

102. Notwithstanding anything contained in the Wealth Tax Act, 1957, the Income-tax Act, 1961, or any law for the time being in force relating to tax on wealth, income, profits or gains, the HIV/AIDS Authority shall not be liable to pay wealth-tax, income-tax or any other tax in respect of their wealth, income or profits or gains derived.

Exemption from tax on wealth and income.

27 of 1957  
43 of 1961

103. The appropriate Government shall cause to be placed before both Houses of the concerned legislature once a year a report regarding the performance of the HIV/AIDS Authority under this Act.

Report of the HIV/AIDS Authority to be placed before Legislature.

104. No suit, prosecution or other legal proceeding shall lie against the Central Government or HIV/AIDS Authority, or against any officer of the Central Government or the Director or members or employees of the HIV/AIDS Authority or any person acting under such Government, or HIV/AIDS Authority for anything which is in good faith done or intended to be done under this Act or any Rule or Regulation thereunder.

Protection of action taken in good faith.

105. The appropriate Government may, by general order, direct that any power exercisable by it under this Act shall, in such circumstances and under such conditions, if any as may be prescribed in the order, be exercisable also by an officer subordinate to that Government or the local authority.

Delegation of powers.

106. (1) The appropriate Government may, by notification in the Official Gazette, make rules and regulations to carry out the purposes of this Act.

Power to make Rules and Regulations.

(2) Without prejudice to the generality of sub-section (1), the appropriate Government may make rules to provide for all or any of the following matters:—

(i) the salary and allowances of the Health Ombud under section 28;

(ii) the procedure to be followed by the Health Ombud under sub-section (1) of section 30;

(iii) the receipt of complaints by the Health Ombud under sub-section (2) of section 30;

(iv) additional powers of the civil court that a Health Ombud may enjoy in making an inquiry under clause (f) of sub-section (4) of section 30;

(v) the manner in which the Health Ombud will maintain records under sub-section (7) of section 30;

(vi) orders as to cost to be made by the Health Ombud under sub-section (3) of section 30;

(vii) the salary and allowances of Directors and other members of HIV/AIDS Authorities under section 44;

(viii) the meeting of HIV/AIDS Authorities and rules of procedure under section 45;

(ix) the allowances and fees of members of HIV/AIDS Authorities for attending meetings under sub-section (2) of section 46;

(x) the controls and restrictions in appointment of officers and employees of the HIV/AIDS Authorities under section 47;

(xi) the salaries and conditions of service of officers and employees of the HIV/AIDS Authorities under section 47;

(xii) the powers and duties of Directors of HIV/AIDS Authorities under section 48;

(xiii) additional powers of a civil court that an HIV/AIDS Authority may enjoy in conducting inquiries under clause (f) of sub-section (1) of section 53;

(xiv) the budget of the HIV/AIDS Authorities under sub-section (4) of section 58;

(xv) the records and annual statements of account of HIV/AIDS Authorities under section 59;

(xvi) the procedure to be followed by a Complaints officer under section 63;

(xvii) the procedure relating to registration of marriages under clause (a) of sub-section (1) of section 71;

(xviii) the protection of property of children affected by HIV/AIDS under sub-section (2) of section 78;

(xix) the suppression of identity in court proceedings under sub-section (1) of section 82;

(xx) the conduct of proceedings where suppression of identity and in camera orders are passed under sub-section (2) of section 82; and

(xxi) the delegation of powers under section 101.

(3) Without prejudice to the generality of sub-section (1), the appropriate Government may make regulations to provide for all or any of the following matters:—

(i) pre and post test counselling under sub-section (6) of section 8;

(ii) epidemiological studies under proviso to clause (c) of section 9;

(iii) recognition of voluntary counselling and testing centres and pathology laboratories for conducting HIV tests under proviso to sub-section (3) of section 10;

(iv) technologies for self testing of HIV under sub-section (5) of section 10;

- (v) data protection under section 15;
- (vi) establishment of voluntary counselling and testing centres under sub-section (3) of section 17;
- (vii) universal Precautions and Post Exposure Prophylaxis Protocols under proviso to sub-section (4) of section 20;
- (viii) drug Substitution, drug maintenance and Needle Syringe Exchange programmes under sub-section (2) of section 21;
- (ix) the training of the Health Ombud under section 26;
- (x) HIV/AIDS surveillance under clause (h) of sub-section (3) of section 50;
- and
- (xi) the setting up of HIV/AIDS helplines under clause (d) of section 52.

(4) Every rule or regulation made by the appropriate Government under this Act shall be laid, as soon as may be after it is made, before the Legislature of such appropriate Government.

**107.** (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:

Power to  
remove  
difficulties.

Provided that no such order shall be made after the expiry of the period of two years from the commencement of this Act.

(2) However, orders made under this section shall be laid, within thirty days, before each House of Parliament.

**108.** The Central Government in consultation with the National HIV/AIDS Authority shall,—

Review and  
monitoring  
of Act.

(a) develop and implement effective and stringent monitoring and reporting mechanisms to oversee the implementation and enforcement of this Act by all persons; and

(b) undertake a review of the working of this Act every three years to ensure that it adequately addresses the issues raised by the HIV epidemic, is successful in promoting and protecting the rights of protected persons and in preventing and controlling the HIV epidemic and it is consistent with constitutional and international human rights obligations.

## SCHEDULE I

(See section 4)

*Illustrative List of Unfair Treatment in Certain Sectors***1. Employment**

- (a) Denial of terms and conditions or benefits and privileges of services that other persons in the same position would enjoy including in relation to:—
  - (i) Recruitment procedures, advertising and selection criteria;
  - (ii) Appointments, and the appointments process, including job placement;
  - (iii) Job classification or grading;
  - (iv) Remuneration, employment benefits and terms and conditions of employment;
  - (v) Employee assistance programmes;
  - (vi) Workplace and facilities;
  - (vii) Occupational health and safety;
  - (viii) Training and development;
  - (ix) Performance evaluation system;
  - (x) Promotion, transfer and demotion;
  - (xi) Disciplinary measures;
  - (xii) Termination of services;
  - (xiii) Provident fund;
  - (xiv) Gratuity and health insurance; and
  - (xv) Non-renewal of employment contract.
- (b) Pressure to leave the employment,
- (c) Insistence for resignation/VRS,
- (d) Being asked not to report for duty,
- (e) Denial of promotions,
- (f) Arbitrary suspension or disciplinary action,
- (g) Creation of a non-conducive atmosphere for work,
- (h) Prejudicial comments and behaviour,
- (i) Public identification, and
- (j) Mandatory isolation or segregation.

**2. Healthcare**

- (a) Provision of medically inappropriate treatment for the condition diagnosed,
- (b) Untimely or arbitrary discharge,
- (c) Charging higher rates for the same or similar services provided to another person at any stage (conditional treatment),
- (d) Imposing conditions in the form of research,

- (e) Prejudicial comments and behaviour,
- (f) Public identification,
- (g) Isolation or segregation unless medically indicated,
- (h) Pressure to leave the healthcare institution, and
- (i) Undignified treatment of a corpse.

### **3. Education**

- (a) Arbitrary suspension by or disciplinary action from an educational institution,
- (b) Prejudicial comments and behaviour,
- (c) Public identification,
- (d) Isolation or segregation unless medically indicated,
- (e) Denial of participation in benefits or services,
- (f) Pressure to leave an educational institution,
- (g) Non-provision of reasonable accommodation,
- (h) Demanding 'HIV-free' certificate at the time of admission 54 of 57,
- (i) Demanding disclosure of HIV test results (irrespective of positive or negative) from the students, and
- (j) Denial of admission on the basis of HIV positive status.

### **4. Insurance**

- (a) Non-renewal of insurance contract,
- (b) Termination of insurance contract,
- (c) Higher premiums,
- (d) AIDS caps,
- (e) Delay in processing of claims,
- (f) Denial of claims,
- (g) HIV/AIDS exclusion clauses, and
- (h) Exclusion clauses based on actual or perceived association with an HIV-positive person or of exposure to HIV.

### **5. Institutions**

- (a) Prisons, Juvenile homes, Rehab Centers, Mental homes, Adoption homes, Hospices, NGOs, Night shelters.

## SCHEDULE II

[See section 51 (e)]

1. Prevention
2. Blood Safety: To ensure availability of adequate and safe blood and blood products for the general population through promotion of voluntary blood donation in the country
3. Risk Reduction
4. STI Control
5. Condom Programming
6. IEC and social mobilisation
7. Spread HIV - related literacy among various sections of society and promote awareness of the safeguards available for the protection of the rights of protected persons through publications, the media, seminars and other available means
8. Care and support for HIV-positive persons
9. Training on HIV/AIDS/STD prevention and control
10. National Family Health Awareness Programme
11. Prevention of Mother to Child transmission
12. Voluntary Testing and Counselling
13. Research and Development
14. Intersectoral collaboration
15. International and bilateral cooperation
16. Programme financing
17. Monitoring and Evaluation
18. External Quality Assurance Scheme
19. Access to Treatment—update WHO essential medicines list
20. Authority shall collect, update and disseminate scientific knowledge/collect, compile and publish technical and statistical data relating to HIV and the measures devised for its effective prevention and control and prepare manuals, codes or guides and disseminate information connected therewith
21. Sensitisation programmes for judiciary, law enforcement etc.
22. Maintain list of care and support centers and homes, doctors providing care and treatment for HIV/AIDS, helplines, testing facilities, legal assistance
23. Institute good practices for the proper surveillance of HIV/AIDS
24. Clinical Management of HIV/AIDS
25. Assist in the implementation of good practices within corporates
26. Corporate collaboration as part of social responsibility schemes
27. NGOs
28. Counselling Guidelines

## STATEMENT OF OBJECTS AND REASONS

Effective legislation addressing the HIV/AIDS epidemic in India is of extreme importance in the context of the prevailing situation in the country. The estimated number of people living with HIV/AIDS as of 2007 are 2.31 million. Of these, an estimated 39% are female and 3.5% are children. These figures significantly under-represent the actual number of people living with AIDS. Many AIDS deaths go unreported in India, due to unprecedented levels of stigma and discrimination. HIV and AIDS affect all segments of India's population, from children to adults, businessmen to homeless people, female sex workers to housewives, and gay men to heterosexuals. However, HIV prevalence among certain groups like sex workers, injecting drug users, truck drivers, migrant workers, gays remain high and is currently around 6 to 8 times that of the general population.

The Bill seeks to provide, *inter alia*, for:—

- (i) protection of the rights of persons affected by HIV.
- (ii) prevention of discrimination to the persons affected by HIV/AIDS in employment, healthcare, education, residence, travel, public/private office, access to services, insurance, etc.
- (iii) maintaining confidentiality of HIV related information.
- (iv) providing access to treatment to the persons suffering from HIV/AIDS without any discrimination in Government hospitals and dispensaries.
- (v) providing social security and launching welfare schemes for persons suffering from HIV/AIDS.

The Bill seeks to achieve the above objectives.

NEW DELHI;  
November 8, 2011

KIRIT PREMJBHAI SOLANKI

PRESIDENT'S RECOMMENDATION UNDER ARTICLES 117 (1), 274 (1) AND 117 (3) OF  
THE CONSTITUTION

[Copy of letter No. H. 11018/1/2011-NACO (P&C) dated 3 May, 2012 from Shri Ghulam Nabi Azad, Minister of Health and Family Welfare to the Secretary-General, Lok Sabha].

The President, having been informed of the subject matter of the HIV/AIDS Bill, 2011 by Dr. Kirit Premjibhai Solanki, Member of Parliament, recommends its introduction under articles 117(1) and 274(1) and consideration under article 117(3) of the Constitution in Lok Sabha.

## FINANCIAL MEMORANDUM

Clause 17 of the Bill provides for right to health and certain supports facilities, goods, measures, service and medical infrastructure. Clause 18 provides for giving wide dissemination protocols for HIV/AIDS-related testing and treatment methodologies. Clause 19 provides for healthcare facilities including travel subsidies for HIV-positive persons and training to staff, tax incentives and exemption and promotion of research and development for prevention and treatment of HIV/AIDS. Clause 20 provides for right to safe working environment. Clause 22 provides for implementation of health insurance and social security schemes for HIV-positive and AIDS patients. Clause 23 provides for right to information and education relating to health and protection of health, etc. Clause 24 provides for duty of State to promote HIV/AIDS related information, education and communication. Clause 25 provides for HIV/AIDS information by healthcare providers. Clause 26 provides for appointment of Health Ombud in each district. Clause 28 provides for salary and allowances of Health Ombud. Clause 36 provides for constitution of HIV/AIDS Authorities at National, State and local levels to perform the functions assigned under this Act. Clause 38 provides for setting up of offices of HIV/AIDS Authority. Clause 39 provides for composition of HIV/AIDS Authorities. Clause 41 provides for Advisory Committee to advice the National Authority in the matters relating to protection and promotion of rights to infected persons, care, support and treatment of persons living with HIV/AIDS. Clause 42 provides for appointments to HIV/AIDS Authority and nomination committee by the appropriate Government. Clause 44 provides for salary and allowances of Director and members of the HIV/AIDS Authority. Clause 45 provides for meetings of the HIV/AIDS Authority. Clause 46 provides for constitution of the Committees by Authority. Clause 49 provides for transfer of undertakings under the National Authority or the State Authority concerned and confer the status of employer and provides them benefits including salary, allowances and other remunerations, etc. Clause 50 provides for implementation of HIV related programme as specified in Schedule II. Clause 51 provides for functions of the National HIV/AIDS Authority. Clause 52 provides for additional functions of State and Union territory HIV/AIDS Authority. Clause 56 provides for calling upon expert in the fields of health, human rights, law and other discipline for providing support to HIV/AIDS affected persons. Clause 57 provides for dissemination of information about reports and minutes of meetings of the Authority. Clause 59 provides for budgetary provisions for Authority. Clause 64 provides for notification of model HIV/AIDS policies. Clause 66 provides for certain obligations of State for promotion of right of protected persons under the Act. Clause 68 provides for interaction with international community and organizations. It also provides for promotion of HIV related human rights. Clause 69 provides for developing and implementing strategy to promote women's right to health. Clause 71 provides for appointment of Registration officers in every sub-district for registration of marriage and for maintaining records. Clause 72 provides for establishment of a Counselling Centre at each marriage office in each district. Clause 73 provides for right to counselling and information to the HIV-positive women who are pregnant. Clause 74 provides for setting up of sexual assault crisis centres in each district by the appropriate Government. Clause 75 provides that every person who is in the care or custody of the State shall have the right to HIV prevention, counselling, testing and treatment. Clause 76 provides that State shall provide a safe and supportive environment and healthcare for young persons. Clause 77 provides for care, support and treatment of children affected by HIV/AIDS. Clause 78 provides for protection of property of children affected by HIV/AIDS. Clause 102 provides exemption from paying of wealth-tax, income-tax or any other tax to the Authority in respect of their wealth, income or profits or gain. The Central Government has to bear the expenditure in respect of Union territories in implementing the provisions of the Bill. The respective State Government shall bear the expenditure in respect of their States. The Bill, therefore, if enacted, will involve expenditure from the Consolidated Fund of India. It is estimated that a recurring expenditure to the tune of rupees five hundred crore is likely to be incurred per annum.

A non-recurring expenditure of rupees one hundred crore is also likely to be incurred.



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**MEMORANDUM REGARDING DELEGATED LEGISLATION**

Clause 106 of the Bill gives power to the Central Government to make rules for carrying out the purposes of the Bill. The rules will relate to matters of detail only. The delegation of Legislative power is, therefore, of a normal character.

## BILL NO. 68 OF 2012

A Bill to provide for prohibition of human trafficking of Indian citizens to foreign countries and welfare of Indian citizens employed abroad and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:—

Short title and  
commencement.

1. (1) This Act may be called the Prohibition of Human Trafficking of Indian Citizens Abroad and Welfare of Overseas Indians Act, 2012.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "Fund" means the Overseas Indian Welfare Fund constituted under section 5;

(b) "human trafficking" means an act of recruiting, transporting, transferring, harbouring or receiving a person through use of force, coercion, fraud or any other means for the purpose of exploitation including sexual exploitation or engaging him as a forced labour in a foreign country; and

(c) "Overseas Indian" means an Indian citizen who is employed outside India by a person who is not an Indian citizen or any company or any enterprise or any vessel which is not registered in the territory of India but does not include Indian citizens working in organs or agencies of the United Nations Organisation.

3. Any person who commits or attempts to commit or abets an act of human trafficking shall be guilty of committing an offence of human trafficking under this Act.

Offence of  
human  
trafficking.

4. The Central Government shall—

Duties of the  
Central  
Government.

(i) take such measures as it may deem necessary including entering into bilateral agreements to generate international co-operation to check human trafficking of Indian citizens; and

(ii) enter into social security agreements with other countries for ensuring protection and welfare of Indian citizens working overseas.

5. (1) The Central Government shall constitute a Fund to be known as the Overseas Indians Welfare Fund.

Overseas  
Indians  
Welfare Fund.

(2) The Fund shall be utilized for the following purposes, namely:—

(a) welfare of persons who become victims of human trafficking;

(b) boarding and lodging facilities to distressed overseas Indians;

(c) meeting expenditure on airlifting of mortal remains of deceased overseas Indians to India or for cremation/burial of such person if the employer is unable or unwilling to do so and the family is unable to meet the cost;

(d) emergency medical care to overseas Indians in need; and

(e) legal assistance to overseas Indians in deserving cases.

6. The Central Government shall, after due appropriation made by Parliament by law in this behalf, credit such sums of money to the Fund as it may think fit for carrying out the purposes of this Act.

Central  
Government  
to provide  
funds.

7. Whoever commits the offence of human trafficking shall be punished with imprisonment for a term which shall not be less than seven years but may extend to life imprisonment and also with fine which may extend to rupees five lakh.

Punishment  
for human  
trafficking.

8. Every person or agency engaged in recruitment or placement of Indian citizens for employment with foreign nationals or in companies outside the country shall get itself registered with such authority, as may be designated by the Central Government for this purpose.

Compulsory  
registration of  
recruiting  
agencies.

9. Whoever contravenes the provisions of section 8 shall be punished with imprisonment for a term which may extend to seven years and with fine which may extend to rupees five lakh or with both.

Punishment  
for  
contravention  
of section 8.

10. The provisions of this Act and rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Act to have  
overriding  
effect.

11. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

Power to make  
rules.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both the Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

## STATEMENT OF OBJECTS AND REASONS

Human trafficking is a crime against humanity. It involves an act of recruiting, transporting, harbouring or receiving a person through use of force, coercion or such other means for the purpose of exploiting them. Every year, thousands of men, women and children fall into the hands of human traffickers. The demand for workers abroad are steadily increasing. Many workers migrate illegally every year as the procedure for legal migration is very cumbersome and expensive. The allurements of good life abroad often lead people to fall into the booby trap of human traffickers.

Indian workers who migrate legally also face many problems like non-payment or delay in payment of wages, harsh working and inhuman living conditions, retention of passport by owner, cheating by intermediaries, incidents of physical abuse and sexual exploitation, etc. In most of the countries access to legal recourse is denied to such workers. Moreover, in some countries legal recourse is so expensive that in most cases employees are not able to afford such options.

United Nations convention against Transnational Organized Crime (UNTOC) and the protocols thereto, assists States to implement the protocol to prevent, suppress and punish trafficking. The protocol requires States to implement the provisions of the protocol by amending their respective domestic laws. In India, trafficking of human beings are taking place in the guise of recruitment agencies. Therefore, it is an urgent necessity to bring the present legislation.

The Bill, accordingly, seeks to provide, *inter alia*, for—

- (i) making human trafficking a punishable offence;
- (ii) setting up of an Overseas Indians Welfare Fund; and
- (iii) compulsory registration of recruitment agencies, etc. and to provide for punishment to those agencies who carry out the business of recruiting persons for overseas employment without registration.

NEW DELHI;  
April 23, 2012.

JAYSHREEBEN PATEL

## FINANCIAL MEMORANDUM

Clause 5 of the Bill provides for setting up of an Overseas Indians Welfare Fund. It further provides for welfare measures for overseas Indians who are victims of human trafficking. Clause 6 provides that the Central Government shall credit such sums of money to the Fund as it may think fit for carrying out the purposes of the Bill. The Bill, therefore, if enacted will involve expenditure from the Consolidated Fund of India. It is estimated that an annual recurring expenditure of about rupees one thousand crore is likely to involve from the Consolidated Fund of India.

A non-recurring expenditure of rupees five hundred crore is also likely to be involved.

## MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 11 of the Bill empowers the Central Government to make rules for carrying out the purposes of the Bill. As the rules will relate to matters of detail only, the delegation of legislative power is of a normal character.

## BILL NO. 1 OF 2012

## ARRANGEMENT OF CLAUSES

## PART I

## PRELIMINARY

## CLAUSES

1. Short title and commencement.
2. Definitions

## PART II

## LEGISLATIVE ASSEMBLY

3. Legislative Assembly and its composition.
4. Qualifications for membership of Legislative Assembly.
5. Duration of Legislative Assembly.
6. Session of Legislative Assembly, prorogation and dissolution.
7. Speaker and Deputy Speaker of Legislative Assembly.
8. Speaker or Deputy Speaker not to preside while a resolution for his removal from office is under consideration.
9. Right of Lieutenant Governor to address and send message to Legislative Assembly.
10. Special address by the Lieutenant Governor.
11. Rights of Ministers as respects Legislative Assembly.
12. Oath or affirmation by members.
13. Voting in Legislative Assembly, power of Assembly to act notwithstanding vacancies and quorum.
14. Vacation of seats.
15. Disqualifications for membership.
16. Disqualification on ground of defection.
17. Penalty for sitting and voting before making oath or affirmation or when not qualified or when disqualified.

## CLAUSES

18. Powers, privileges, etc. of members.
19. Salaries and allowances of members.
20. Exemption of property of the Union from taxation.
21. Restrictions on laws passed by Legislative Assembly with respect to certain matters.
22. Special provisions as to financial Bills.
23. Procedure as to lapsing of Bills.
24. Assent to Bills.
25. Bills reserved for consideration.
26. Requirements as to sanction, etc.
27. Annual financial statement.
28. Procedure in Legislative Assembly with respect to estimates.
29. Appropriation Bills.
30. Supplementary, additional or excess grants.
31. Votes on accounts.
32. Authorisation of expenditure pending its sanction by Legislative Assembly.
33. Rules of procedure.
34. Official language or languages of the Union territory and language or languages to be used in Legislative Assembly.
35. Language to be used for Bills, Act, etc.
36. Restriction on discussion in the Legislative Assembly.
37. Courts not to inquire into proceedings of Legislative Assembly.

## PART III

## DELIMITATION OF CONSTITUENCIES

38. Election Commission to delimit constituencies.
39. Power of Election Commission to maintain delimitation orders upto date.
40. Elections to the Legislative Assembly.

## PART IV

## CERTAIN PROVISIONS RELATING TO LIEUTENANT GOVERNOR AND MINISTERS

41. Matters in which Lieutenant Governor to act in his discretion.
42. Advice by Ministers.
43. Other provisions as to Ministers.
44. Conduct of business.
45. Duties of Chief Ministers as respects the furnishing of information, etc. to the Lieutenant Governor.

## PART V

## MISCELLANEOUS AND TRANSITIONAL PROVISIONS

46. Consolidated Fund of the Union territory.
47. Contingency Fund of the Union territory.
48. Audit reports.
49. Relation of Lieutenant Governor and his Ministers to President.
50. Period of order made under article and approval thereof by Parliament.
51. Authorisation of expenditure by President.
52. Contracts and suits.
53. Power of President to remove difficulties.
54. Laying of Rules before Legislative Assembly.
55. Amendments to the Constitution.
56. Amendment of section 27A of Act 43 of 1950.

## BILL NO. 1 OF 2012

A Bill to provide for the creation of a Legislative Assembly for the Union territory of Andaman and Nicobar Islands and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-third year of the Republic of India as follows:—

## PART I

## PRELIMINARY

Short title and  
commencement.

1. (1) This Act may be called the Government of Union Territory of Andaman and Nicobar Islands Act, 2012.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "article" means an article of the Constitution;



(b) "Assembly constituency" means a constituency provided under this Act for the purpose of election to the Legislative Assembly;

(c) "Election Commission" means the Election Commission referred to in article 324;

(d) "Legislative Assembly" means the Legislative Assembly of the Union territory of Andaman and Nicobar Islands;

(e) "Scheduled Castes" in relation to the Union territory means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under article 341 of the Constitution to be Scheduled Castes in relation to that Union territory;

(f) "Scheduled Tribes" in relation to the Union territory means such tribes, races or parts of the groups within such tribes or races as are deemed under article 342 to be Scheduled Tribes in relation to the Union territory; and

(g) "Union territory" means the Union territory of Andaman and Nicobar Islands.

## PART II

### LEGISLATIVE ASSEMBLY

3. (1) The total number of seats in the Legislative Assembly to be filled by persons chosen by direct election from territorial constituencies shall be thirty.

Legislative  
Assembly and  
its  
composition.

(2) For the purposes of election to the Legislative Assembly, the Union territory shall be divided into single-member assembly constituencies in accordance with the provisions of Part III in such manner that the population of each of the constituencies shall, so far as practicable, be the same throughout the Union territory.

(3) Seats shall be reserved for the Scheduled Tribes in the Legislative Assembly, and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Scheduled Tribes in the Union territory bears to the total population of the Union territory and the provisions of article 334 shall apply to such reservation.

*Explanation.*—In this section, the expression "population," means the population as ascertained in the last preceding census of which the relevant figures have been published:

Provided that where such figures have not been published, then for the purposes of elections for the constitution of the first Legislative Assembly under this Act, the provisional figures of the population of the Union territory as published in relation to the 2011 census shall be deemed to be the population of the Union territory.

4. A person shall not be qualified to be chosen to fill a seat in the Legislative Assembly unless he—

Qualifications  
for member-  
ship of  
Legislative  
Assembly.

(a) is a citizen of India and makes and subscribes before some person authorised in that behalf by the Election Commission on oath or affirmation according to the form set out for the purpose in the Schedule;

(b) is not less than twenty-five years of age; and

(c) possess such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

5. The Legislative Assembly, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the Assembly:

Duration of  
Legislative  
Assembly.

Provided that the said period may, while a Proclamation of Emergency issued under clause (1) of article 352 is in operation, be extended by the President by order for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.

Session of  
Legislative  
Assembly,  
prorogation  
and  
dissolution.

6. (1) The Lieutenant Governor shall, from time to time, summon the Legislative Assembly to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

(2) The Lieutenant Governor may, from time to time,—

(a) prorogue the Assembly;

(b) dissolve the Assembly.

Speaker or  
Deputy  
Speaker of  
Legislative  
Assembly.

7. (1) The Legislative Assembly shall, as soon as may be, choose two members of the Assembly to be respectively Speaker and Deputy Speaker thereof and, so often as the office of Speaker or Deputy Speaker becomes vacant, the Assembly shall choose another member to be Speaker or Deputy Speaker, as the case may be.

(2) A member holding office as Speaker or Deputy Speaker of the Legislative Assembly—

(a) shall vacate his office if he ceases to be a member of the Assembly;

(b) may, at any time by writing under his hand addressed, if such member is the Speaker, to the Deputy Speaker, and if such member is the Deputy Speaker, to the Speaker resign his office; and

(c) may be removed from his office by a resolution of the Assembly passed by a majority of all the then members of the Assembly:

Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution:

Provided further that whenever the Assembly is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the Assembly after the dissolution.

(3) While the office of Speaker is vacant the duties of the office shall be performed by the Deputy Speaker or, if the office of Deputy Speaker is also vacant, by such member of the Assembly as may be determined by the rules of procedure of the Assembly.

(4) During the absence of the Speaker from any sitting of the Assembly, the Deputy Speaker, or if he is also absent, such person as may be determined by the rules of procedure of the Assembly, or if no such person is present, such other person as may be determined by the Assembly, shall act as Speaker.

(5) There shall be paid to the Speaker and the Deputy Speaker of the Legislative Assembly such salaries and allowances as may be respectively fixed by the Legislative Assembly by law and until provision in that behalf is so made, such salaries and allowances as the Lieutenant Governor may, with the approval of the President, by order determine.

Speaker or  
Deputy  
Speaker not  
to preside  
while a  
resolution  
for his  
removal  
from office  
is under  
consideration.

8. (1) At any sitting of the Legislative Assembly, while any resolution for the removal of the Speaker from his office is under consideration, the Speaker, or while any resolution for the removal of the Deputy Speaker from his office is under consideration, the Deputy Speaker, shall not, though he is present, preside and the provisions of sub-section (4) of section 7 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Speaker or, as the case may be, the Deputy Speaker is absent.

(2) The Speaker shall have the right to speak in and otherwise to take part in the proceedings of the Legislative Assembly while any resolution for his removal from office is under consideration in the Assembly and shall, notwithstanding anything in section 13, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of an equality of votes.

9. (1) The Lieutenant Governor may address the Legislative Assembly and for that purpose require the attendance of members.

Right of Lieutenant Governor to address and send message to Legislative Assembly.

(2) The Lieutenant Governor may send message to the Assembly whether with respect to a Bill then pending in the Assembly or otherwise and when a message is so sent, the Assembly shall with all convenient despatch consider any matter required by the message to be taken into consideration.

10. (1) At the commencement of the first session after each general election to the Legislative Assembly and at the commencement of the first session of each year, the Lieutenant Governor shall address the Legislative Assembly and inform it of the causes of its summons.

Special address by the Lieutenant Governor.

(2) Provision shall be made by rules to be made by the Assembly regulating its procedure for the allotment of time for discussion of the matters referred to in such address.

11. Every Minister shall have the right to speak in and otherwise to take part in the proceedings of the Legislative Assembly and to speak in and otherwise to take part in the proceedings of any committee of the Legislative Assembly of which he may be named a member, but shall not by virtue of this section be entitled to vote.

Rights of Ministers as respects Legislative Assembly.

12. Every member of the Legislative Assembly shall, before taking his seat, make and subscribe before the Lieutenant Governor, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Schedule.

Oath or affirmation by member.

13. (1) Save as otherwise provided in the act, question at any sitting of the Legislative Assembly shall be determined by a majority of votes of the members present and voting other than the Speaker or person acting as such.

Voting in Legislative Assembly, power of Assembly to act notwithstanding vacancies and quorum.

(2) The Speaker or person acting as such shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

(3) The Legislative Assembly shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in the Legislative Assembly shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do, sat or voted or otherwise took part in the proceedings.

(4) The quorum to constitute a meeting of the Legislative Assembly shall be one-third of the total number of members of the Assembly.

(5) If at any time during a meeting of the Legislative Assembly there is no quorum. It shall be the duty of the Speaker, or person acting as such, either to adjourn the Assembly or to suspend the meeting until there is a quorum.

14. (1) No person shall be a member both of Parliament and of the Legislative Assembly and if a person is chosen a member both of Parliament and of such Assembly, then at the expiration of such period as is specified in or under the Representation of People Act, 1951, and the rules made by the President under clause (2) of article 101 and clause (2) of article 190, that person's seat in Parliament shall become vacant, unless he had previously resigned his seat in the Legislative Assembly.

Vacation of seats.

(2) If a member of the Legislative Assembly—

(a) becomes subject to any disqualification mentioned in section 15 or section 16 for membership of the Assembly, or

(b) resigns his seat by writing under his hand addressed to the Speaker and his resignation is accepted by the Speaker, his seat shall thereupon become vacant:

Provided that in the case of any resignation referred to clause (b), if from the information received or otherwise and after making such inquiry as he thinks fit, the Speaker is satisfied that such resignation is not voluntary or genuine he shall not accept such resignation.

(3) If for a period of sixty days a member of the Legislative Assembly is without permission of the Assembly absent from all meetings thereof, the Assembly may declare his seat vacant:

Provided that in computing the said period of sixty days no account shall be taken of any period during which the Assembly is prorogued or is adjourned for more than four consecutive days.

Disqualification  
for  
membership.

15. (1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly—

(a) if he holds any office of profit under the Government of India or the Government of any State or the Government of any Union territory other than an office declared by law made by Parliament or by the Legislature of any State or by the Legislative Assembly of any other Union territory not to disqualify its holder; or

(b) if he is for the time being disqualified for being chosen as, and for being, a member of either House of Parliament under the provisions of sub-clause (b), sub-clause (c) or sub-clause (d) of clause (1) of article 102 or of any law made in pursuance of that article.

(2) For the purpose of the section, a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State or the Government of any Union territory by reason only that he is a Minister either for the Union or for such State or Union territory.

(3) If any question arises as to whether a member of the Legislative Assembly has become disqualified for being such a member under the provisions of sub-section (1), the question shall be referred for the decision of the President and his decision shall be final.

(4) Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion.

Disqualification  
on ground of  
defection.

16. The provisions of the Tenth Schedule to the Constitution shall, subject to the necessary modifications (including modifications for construing reference therein to the Legislative Assembly of a State, article 188, article 194 and article 212 as references, respectively, to the Legislative Assembly, section 12, section 18 and section 37 of this Act), apply to and in relation to the members of the Legislative Assembly as they apply to and in relation to the members of the Legislative Assembly of a State and accordingly—

(a) the said Tenth Schedule as so modified shall be deemed to form part of this Act; and

(b) a person shall be disqualified for being a member of the Legislative Assembly if he is so disqualified under the said Tenth Schedule as so modified.

Penalty for  
sitting and  
voting before  
making oath  
of affirmation  
or when not  
qualified or  
when  
disqualified.

17. If a person sits or votes as a member of the Legislative Assembly before he has complied with the requirements of section 12 or when he knows that he is not qualified or that he is disqualified for membership thereof, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the Union.

Powers.  
privileges,  
etc. of  
members.

18. (1) Subject to the provisions of this Act and to the rules and standing orders regulating the procedure of the Legislative Assembly, there shall be freedom of speech in the Legislative Assembly.

(2) No member of the Legislative Assembly shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Assembly or any Committee thereof and no person shall be so liable in respect of the publication by or under the authority of such Assembly of any report, paper, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of the Legislative Assembly and of the members and the committees thereof shall be such as are for the time being enjoyed by the House of the people and its members and committees.

(4) The provisions of sub-sections (1), (2) and (3) shall apply in relation to persons who by virtue of this Act have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Assembly or any committee thereof as they apply, in relation to members of that Assembly.

19. Members of the Legislative Assembly shall be entitled to receive such salaries and allowances as may from time to time be determined by the Legislative Assembly by law and until provision in that behalf is so made, such salaries and allowances as the Lieutenant Governor may, with the approval of the President, by order determine.

Salaries and allowances of members.

20. The property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempted from all taxes imposed by or under any law made by the Legislative Assembly or by or under any other law in force in the Union territory:

Exemption of property of the Union from taxation.

Provided that nothing in this section shall, until Parliament by law otherwise provides, prevent any authority within the Union territory from levying any tax on any property of the Union to which such property was immediately before the commencement of the Constitution liable or treated as liable, so long as the tax continues to be levied in the Union territory.

21. (1) The provisions of article 286, article 287 and article 288 shall apply in relation to any law passed by the Legislative Assembly with respect to any of the matters referred to in those articles as they apply in relation to any law passed by the Legislature of a State with respect to those matters.

Restrictions on laws passed by Legislative Assembly with respect to certain matters.

(2) The provisions of article 304 shall, with the necessary modification, apply in relation to any law passed by the Legislative Assembly with respect to any of the matters referred to in that article as they apply in relation to any law passed by the Legislature of a State with respect to those matters.

22. (1) A Bill or amendment shall not be introduced into, or moved in, the Legislative Assembly except on the recommendation of the Lieutenant Governor if such Bill or amendment makes provision for any of the following matters, namely:—

Special provisions as to financial Bills.

- (a) the imposition, remission, alteration or regulation of any tax;
- (b) the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of the Union territory;
- (c) the appropriation of moneys out of the Consolidated Fund of the Union territory;
- (d) the declaring of any expenditure to the expenditure charged on the Consolidated Fund of the Union territory or the increasing of the amount of any such expenditure;
- (e) the receipt of money on account of the Consolidated Fund of the Union territory or the custody of such money:

Provided that no recommendation shall be required under this sub-section for the moving of an amendment making provision for the reduction or abolition of any tax.

(2) A Bill or amendment shall not be deemed to make provision for any of the matters aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of the Union territory shall not be passed by the Legislative Assembly unless the Lieutenant Governor has recommended to that Assembly the

Procedure as  
to lapsing of  
Bills.

consideration of the Bill.

23. (1) A Bill pending in the Legislative Assembly shall not lapse by reason of the prorogation of the Assembly.

Assent to  
Bills.

(2) A Bill which is pending in the Legislative Assembly shall lapse on a dissolution of the Assembly.

24. When a Bill has been passed by the Legislative Assembly it shall be presented to the Lieutenant Governor and the Lieutenant Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President:

Provided that the Lieutenant Governor may, as soon as possible after the presentation of the Bill to him for assent, return the Bill if it is not a Money Bill together with a message requesting that the Assembly will reconsider the Bill or any specified provisions thereof, and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and, when a Bill is so returned, the Assembly will reconsider the Bill accordingly, and if the Bill is passed again with or without amendment and presented to the Lieutenant Governor for assent, the Lieutenant Governor shall declare either that he assents to the Bill or that he reserves the Bill for the consideration of the President:

Provided further that the Lieutenant Governor shall not assent to, but shall reserve for the consideration of the President, any Bill which:—

(a) in the opinion of the Lieutenant Governor would if it became law so derogate from the powers of the High Court as to endanger the position which that Court is by the Constitution designed to fill; or

(b) the President may, by order direct to be reserved for his consideration; or

(c) relates to a matter referred to in sub-section (5) of section 7 or section 19 or section 34 or sub-section (3) of section 43.

*Explanation.*—For the purposes of this section and section 25, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the matters specified in sub-section (1) of section 22 or any matter incidental to any of those matters and in either case, there is endorsed thereon the certificate of the Speaker of the Legislative Assembly signed by him that it is a Money Bill.

Bills reserved  
for  
consideration.

25. When a Bill is reserved by the Lieutenant Governor for the consideration of the President, the President shall declare either that he assents to the Bill or that he withholds assent therefrom:

Provided that where the Bill is not a Money Bill, the President may direct the Lieutenant Governor to return the Bill to the Legislative Assembly together with such a message as is mentioned in the first proviso to section 24 and when a Bill is so returned the Assembly shall reconsider it accordingly within a period of six months from the date of receipt of such message and if it is again passed by the Assembly with or without amendment it shall be presented again to the President for his consideration.

Requirements  
as to sanction,  
etc.

26. No Act of the Legislative Assembly and no provision in any such Act shall be invalid by reason only that some previous sanction or recommendation required by this Act was not given if assent to that Act was given by the Lieutenant Governor or on being reserved by the Lieutenant Governor for the consideration of the President, by the President.

Annual  
financial  
statement.

27. (1) The Lieutenant Governor shall in respect of every financial year cause to be laid before the Legislative Assembly, with the previous sanction of the President, a statement of the estimated receipts and expenditure of the Union territory for that year, in this Part referred to as the "annual financial statement".

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

(a) the sums required to meet expenditure described by this Act as expenditure

charged upon the Consolidated Fund of the Union territory; and

(b) the sums required to meet other expenditure proposed to be made from the Consolidated Fund of the Union territory and shall distinguish expenditure on revenue account from other expenditure.

(3) Notwithstanding anything contained in any law for the time being in force, the following expenditure shall be expenditure charged on the Consolidated Fund of the Union territory:

(a) the emoluments and allowances of the Lieutenant Governor and other expenditure relating to his office as determined by the President by general or special order;

(b) the charges payable in respect of loans advanced to the Union territory from the Consolidated Fund of India including interest, sinking fund charges and redemption charges and other expenditure connected therewith;

(c) the salaries and allowances of the Speaker and the Deputy Speaker of the Legislative Assembly;

(d) any sums required to satisfy any judgement, decree or award of any court or arbitral tribunal;

(e) any other expenditure declared by the Constitution or by law made by Parliament or by the Legislative Assembly to be so charged.

28. (1) So much of the estimates as relates to expenditure charged upon the Consolidated Fund of the Union territory shall not be submitted to the vote of the Legislative Assembly, but nothing in this sub-section shall be construed as preventing the discussion in the Legislative Assembly of any of those estimates.

Procedure in  
Legislative  
Assembly  
with respect  
to estimates.

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the Legislative Assembly, and the Legislative Assembly shall have power to assent or to refuse to assent, to any demand, or to assent to any demand subject to a reduction of the amount specified therein.

(3) No demand for a grant shall be made except on the recommendation of the Lieutenant Governor.

Appropriation  
Bills.

29. (1) As soon as may be after the grants under section 28 have been made by the Legislative Assembly there shall be introduced a Bill to provide for the appropriation out of the Consolidated Fund of the Union territory of all moneys required to meet—

(a) the grants so made by the Assembly; and

(b) the expenditure charged on the Consolidated Fund of the Union territory but not exceeding in any case the amount shown in the statement previously laid before the Assembly.

(2) No amendment shall be proposed to any such Bill in the Legislative Assembly which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of the Union territory and the decision of the person presiding as to whether an amendment is inadmissible under this sub-section shall be final.

(3) Subject to the other provisions of this Act, no money shall be withdrawn from the Consolidated Fund of the Union territory except under appropriation made by law passed in accordance with provisions of this section.

Supplementary,  
addition or  
excess grants.

30. (1) The Lieutenant Governor shall,—

(a) if the amount authorised by any law made in accordance with the provisions of section 29 to be expended for a particular service for the current financial year is found to be insufficient for purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for the year, or

(b) if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year, cause to be laid before the Legislative Assembly, with the previous sanction of the President, another statement showing the estimated amount of that expenditure or cause to be presented to the Legislative Assembly with such previous sanction a demand for such excess, as the case may be.

(2) The provisions of sections 27, 28 and 29 shall have effect in relation to any such statement and expenditure or demand and also to any law to be made authorising the appropriation of moneys out of the Consolidated Fund of the Union territory to meet such expenditure or the grant in respect of such demand as they have effect in relation to the annual financial statement and the expenditure mentioned therein or to a demand for a grant and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of the Union territory to meet such expenditure or grant.

Votes on  
account.

31. (1) Notwithstanding anything in the foregoing provisions of this Part, the Legislative Assembly shall have power to make any grant in advance in respect of the estimated expenditure for a part of any financial year pending the completion of the procedure prescribed in section 28 for the voting of such grant and the passing of the Law in accordance with the provisions of section 29 in relation to that expenditure and the Legislative Assembly shall have power to authorise by law the withdrawal of moneys from the Consolidated Fund of the Union territory for the purposes for which the said grant is made.

(2) The provisions of sections 28 and 29 shall have effect in relation to the making of any grant under sub-section (1) or to any law to be made under that sub-section as they have effect in relation to the making of a grant with regard to any expenditure mentioned in the annual financial statement and the law to be made for the authorisation of appropriation of moneys, out of the Consolidated Fund of the Union territory to meet such expenditure.

Authorisation  
of expenditure  
pending its  
sanction by  
Legislative  
Assembly.

32. Notwithstanding anything in the foregoing provisions of this Part, the Lieutenant Governor may authorise such expenditure from the Consolidated Fund of the Union territory as he deems necessary for a period of not more than six months beginning with the date of the constitution of the Consolidated Fund of the Union territory, pending the sanction such expenditure by the Legislative Assembly.

Rules of  
procedure.

33. (1) The Legislative Assembly may make rules for regulating, subject to the provisions of this Act, its procedure and the conduct of its business:

Provided that the Lieutenant Governor shall, after consultation with the Speaker of the Legislative Assembly and with the approval of the President, make rules—

(a) for securing the timely completion of financial business;

(b) for regulating the procedure of, and the conduct of business in, the Legislative Assembly in relation to any financial matter or to any Bill for the appropriation of moneys out of the Consolidated Fund of the Union territory;

(c) for prohibiting the discussion of, or the asking of questions on, any matter which affects the discharge of the functions of the Lieutenant Governor in so far as he is required by or under this Act or any law to act in his discretion.

(2) Until rules are made under sub-section (1), the rules of procedure and standing orders with respect to the Legislative Assembly of the State of Uttar Pradesh in force immediately before the commencement of this Act shall have effect in relation to the Legislative Assembly subject to such modifications and adaptations as may be made therein by the Lieutenant Governor.



34. (1) The Legislative Assembly may by law adopt any one or more of the languages in use in the Union territory or Hindi as the official language or languages to be used for all or any of the official purposes of the Union territory:

Provided that the President may by order direct—

(i) that the official language of the Union shall be adopted for such of the official purposes of the Union territory as may be specified in the order.

(ii) that any other language shall also be adopted throughout the Union territory or such part thereof for such of the official purposes of the Union territory as may be specified in the order, if the President is satisfied that a substantial proportion of the population of the Union territory desires the use of that other language for all or any of such purposes.

Official language or languages of the Union territory and language or languages to be used in Legislative Assembly.

(2) The business in the Legislative Assembly shall be transacted in the official language or languages of the Union territory or in Hindi or in English:

Provided that the Speaker or the Legislative Assembly or the person acting as such, as the case may be, may permit any member who cannot adequately express himself in any of the languages aforesaid, to address the Assembly in his mother-tongue.

35. Notwithstanding anything contained in section 34, until Parliament by law otherwise provides, the authoritative texts—

(a) of all Bills to be introduced or amendments thereto to be moved in the Legislative Assembly;

(b) of all Acts passed by the Legislative Assembly; and

(c) of all orders, rules, regulations and bye-laws issued under any law made by the Legislative Assembly,

shall be in English language:

Provided that where the Legislative Assembly has prescribed any language other than the English language for use in Bills introduced in, or Acts passed by the Legislative Assembly or in any order, rule, regulation or bye-law issued under any law made by the Legislative Assembly, a translation of the same in the English language published under the authority of the Lieutenant Governor in the official Gazette shall be deemed to be the authoritative text thereof in the English language.

Language to be used for Bills, Acts, etc.

36. No discussion shall take place in the Legislative Assembly with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of duties.

Restrictions on discussion in the Legislative Assembly.

37. (1) The validity of any proceedings in the Legislative Assembly shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or member of the Legislative Assembly in whom powers are vested by or under this Act for regulating procedure or the conduct of business, or for maintaining order in the Legislative Assembly shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

Courts not to inquire into proceedings of Legislative Assembly.

## PART III

## DELIMITATION OF CONSTITUENCIES

Election  
Commission  
to delimit  
constituencies.

38. (1) The Election Commission shall, in the manner herein provided, distribute the seats assigned to the Legislative Assembly under section 3 to single-member territorial constituencies and delimit them having regard to the following provisions, namely:—

(a) all constituencies shall, as far as practicable, be delimited in such manner that the ratio between the population of each of such constituencies and the total population of the Union territory is the same; and

(b) constituencies in which seats are reserved for the Scheduled Castes/Tribes shall, as far as practicable, be located in areas where the proportion of their population to the total population is comparatively large.

(2) The Election Commission shall—

(a) publish its proposals for the delimitation of constituencies in the Official Gazette and also in such other manner as the Commission may consider fit, together with a notice inviting objections and suggestions in relation to the proposals and specifying a date on or after which the proposals will be further considered by it;

(b) consider all objections and suggestions which may have been received by it before the date so specified;

(c) after considering all objections and suggestions which may have been received by it before the date so specified, finalise delimitation of constituencies and cause such order or orders to be published in the Official Gazette; and upon such publication, the order or orders shall have the full force of law and shall not be called in question in any court.

Power of  
Election  
Commission  
to maintain  
delimitations  
orders upto  
date.

39. The Election Commission may, from time to time, by notification in the Official Gazette,—

(a) correct any printing mistakes in any order made under section 38 or any error arising therein from inadvertent slip or omission; and

(b) where the boundaries or name of any territorial division mentioned in any such order are or is altered, make such amendments as appear to it to be necessary or expedient for bringing such order upto date.

Election to  
the  
Legislative  
Assembly.

40. (1) For the purpose of constituting the Legislative Assembly, a general election will be held as soon as may be after the delimitation of all the assembly constituencies under section 38.

(2) For the purpose of sub-section (1), the Lieutenant Governor shall, by one or more notifications published in the Official Gazette, call upon all the said assembly constituencies to elect members in accordance with the provisions of the Representation of the People Act, 1951 and of the rules and orders made or issued thereunder as applicable under sub-section (3).

43 of 1951.

(3) The Representation of the People Act, 1950, the Representation of the People Act, 1951 the rules and orders made or issued under the said Acts and all other laws for the time being in force relating to the elections shall apply with necessary modifications (including modifications for construing references therein to a State, State Government and Governor as including references to the Union territory, Government of the Union territory and Lieutenant Governor, respectively) to, and in relation to, the general election referred to in sub-section (1).

43 of 1950.  
43 of 1951.

## PART IV

## CERTAIN PROVISIONS RELATING TO LIEUTENANT GOVERNOR AND MINISTERS

41. (1) The Lieutenant Governor shall act in his discretion in a matter—

(i) which falls outside the purview of the powers conferred on the Legislative Assembly but in respect of which powers or functions are entrusted or delegated to him by the President, or

(ii) in which he is required by or under any law to act in his discretion or to exercise any judicial or quasi-judicial functions.

Matters in which Lieutenant Governor to act in his discretion.

(2) If any question arises as to whether any matter is or is not a matter as respects which the Lieutenant Governor is by or under any law required to act in his discretion, the decision of the Lieutenant Governor thereon shall be final.

(3) If any question arises as to whether any matter is or is not a matter as respects which the Lieutenant Governor is required by any law to exercise any judicial or quasi-judicial functions, the decision of the Lieutenant Governor thereon shall be final.

42. The question whether any, and if so, what, advice was tendered by Ministers to the Lieutenant Governor shall not be inquired into any court.

Advice by Ministers.

43. (1) Before a Minister enters upon his office, the Lieutenant Governor shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Schedule.

Other provisions as to Ministers.

(2) A Minister who, for any period of six consecutive months, is not a member of the Legislative Assembly, at the expiration of that period, shall cease to be a Minister.

(3) The salaries and allowances of Ministers shall be such as the Legislative Assembly may from time to time by law determine and until the Legislative Assembly so determines, shall be determined by the Lieutenant Governor with the approval of the President.

44. (1) The President shall make rules—

Conduct of business.

(a) for the allocation of business to the Ministers in so far as it is business with respect to which the Lieutenant Governor is required to act on the aid and advice of his Council of Ministers; and

(b) for the more convenient transaction of business with the Ministers, including the procedure to be adopted in the case of a difference of opinion between the Lieutenant Governor and the Council of Ministers or a Minister.

(2) Save as otherwise provided in this Act, all executive action of the Lieutenant Governor whether taken on the advice of his Ministers or otherwise shall be expressed to be taken in the name of the Lieutenant Governor.

(3) Orders and other instruments made and executed in the name of the Lieutenant Governor shall be authenticated in such manner as may be specified in rules to be made by the Lieutenant Governor and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Lieutenant Governor.

45. It shall be the duty of the Chief Minister—

(a) to communicate to the Lieutenant Governor all decisions of Council of Ministers relating to the administration of the affairs of the Union territory and proposals for legislation;

(b) to furnish such information relating to the administration of the affairs of the Union territory and proposals for legislation as Lieutenant Governor may call for; and

(c) if the Lieutenant Governor so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

Duties of Chief Minister as respects the furnishing of information, etc. to the Lieutenant Governor.

## PART V

## MISCELLANEOUS AND TRANSITIONAL PROVISIONS

Consolidated  
Fund of the  
Union  
territory.

46. (1) As from such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, all revenues received in the Union territory by the Government of India or the Lieutenant Governor in relation to any matter with respect to which the Legislative Assembly has power to make laws, and all grants made and all loans advanced to the Union territory from the Consolidated Fund of India and all moneys received by the Union territory in repayment of loans shall form one Consolidated Fund to be entitled "the Consolidated Fund of the Union territory of Andaman and Nicobar Islands" (referred to in this Act as the Consolidated Fund of the Union territory).

(2) No moneys out of the Consolidated Fund of the Union territory shall be appointed except in accordance with and for the purposes and in the manner provided in this Act.

(3) The custody of the Consolidated Fund of the Union territory, the payment of moneys into such Fund, the withdrawal of money therefrom and all other matters connected with or ancillary to those matters shall be regulated by rules made by the Lieutenant Governor with the approval of the President.

Contingency  
Fund of the  
Union  
territory.

47. (1) There shall be established a Contingency Fund in the nature of an imprest to be entitled "the Contingency Fund of the Union territory of Andaman and Nicobar Islands" into which shall be paid from and out of the Consolidated Fund of the Union territory such sums as may, from time to time be determined by law made by the Legislative Assembly; and the said Fund shall be held by the Lieutenant Governor to enable advances to be made by him out of such Fund.

(2) No advances shall be made out of the Contingency Fund referred to in sub-section (1) except for the purposes of meeting unforeseen expenditure pending authorisation of such expenditure by the Legislative Assembly under appropriation made by law.

(3) The Lieutenant Governor may make rules regulating all matters connected with or ancillary to the custody of, the payment of moneys into and the withdrawal of moneys from the aforesaid Contingency Fund.

Audit reports.

48. The reports of the Comptroller and Auditor-General of India relating to the accounts of the Union territory for any period subsequent to the date referred to in sub-section (1) of section 46 shall be submitted to the Lieutenant Governor who shall cause them to be laid before the Legislative Assembly.

Relation of  
Lieutenant  
Governor and  
his Ministers  
to President.

49. Notwithstanding anything in this Act, the Lieutenant Governor and his Council of Ministers shall be under the general control of, and comply with such particular directions, if any, as may from time to time be given by the President.

Period of  
order made  
under article  
239AB and  
approval  
thereof by  
Parliament.

50. (1) Every order made by the President under article 239AB shall expire at the end of one year from the date of issue of the order and the provisions of clauses (2) and (3) of article 356 shall, so far as may be, apply to such order as they apply to a Proclamation issued under clause (1) of article 356.

(2) Notwithstanding anything contained in sub-section (1), the President may extend the duration of the aforesaid order for a further period not exceeding two years from the date of expiry of the order under sub-section (1) subject to the condition that every extension of the said order for any period beyond the expiration of one year shall be approved by resolutions of both Houses of Parliament.

51. Where the Legislative Assembly is dissolved or its functioning as such Assembly remains suspended, on account of an order made by the President under article 239AB, it shall be competent for the President to authorise when the House of the People is not in session expenditure from the Consolidated Fund of the Union territory pending the sanction of such expenditure by Parliament.

Authorisation  
of expenditure  
by President.

52. For the removal of doubts it is hereby declared that—

Contracts and  
suits

(a) all contracts in connection with the administration of the Union territory are contracts made in the exercise of the executive power of the Union; and

(b) all suits and proceedings in connection with the administration of the Union territory shall be instituted by or against the Government of India.

53. (1) If any difficulty arises in relation to the transaction from the provisions of any law repealed by the Act or in giving effect to the provisions of this Act and in particular in relation to the constitution of the Legislative Assembly, the President may by order do anything not inconsistent with the provisions of the Constitution or of this Act which appear to him to be necessary or expedient for the purpose of removing the difficulty:

Power of  
President to  
remove  
difficulties

Provided that no order under the sub-section (1) shall be made after the expiry of three years from the date of constitution of the first Legislative Assembly.

(2) Every order made under sub-section (1) shall be laid before each House of Parliament.

54. Every rule made by the Lieutenant Governor under this Act shall be laid as soon as it is made, before the Legislative Assembly.

Laying of  
Rules before  
Legislative  
Assembly.

55. On and from the appointed day—

Amendments  
to the  
Constitution.

(a) after article 239AA, the following article shall be inserted, namely:—

"239AAA. (1) As from the date of commencement of the Government of Union territory of Andaman and Nicobar Islands Act, 2012 the administrator of the Union territory of Andaman and Nicobar Islands appointed under article 239 shall be designated as the Lieutenant Governor.

Special  
Provision with  
respect to  
Andaman and  
Nicobar  
Islands.

(2) The provisions of articles 239AA and 239AB shall, so far as may be apply *mutatis mutandis* in relation to the Union territory of Andaman and Nicobar Islands, Lieutenant Governor and the Legislative Assembly, as they apply in relation to the National Capital Territory of Delhi and its Legislature, respectively."

(b) in article 240, in clause (1) for the existing proviso, the following provisos shall be substituted namely:—

"Provided that when any body is created under article 239A or 239AAA to function as a Legislature for the Union territory of Pondicherry or Union territory of Andaman and Nicobar Islands, as the case may be, the President shall not make any regulation for the peace, progress and good Government of that Union territory with effect from the date appointed for the first meeting of the Legislature:

Provided further that whenever the body functioning as a Legislature for the Union Territory of Pondicherry or Andaman and Nicobar Islands, as the case may be, is dissolved, or the functioning of that body as such Legislature remains suspended on account of any action taken under any such law as is referred to in clause (1) of article 239A or 239AB, as the case may be, the President may, during the period of such dissolution or suspension, make regulations for the peace, progress and good Government of that Union territory."

(c) in the Fourth Schedule to the Constitution, in the Table—

(a) Entries 29 and 30 shall be re-numbered as entries 30 and 31, respectively, and before entry 30 as so re-numbered, the following entry shall be inserted, namely:—

"29 Andaman and Nicobar Islands... 1";

(b) for the figures "233", the figures "234" shall be substituted.

Amendment  
of section 27A  
of Act 43 of  
1950.

56. In section 27A of the Representation of People Act, 1950, after sub-section (4), the following sub-section shall be inserted, namely:— 43 of 1950.

"(5) The electoral college for the Union territory of Andaman and Nicobar Islands shall consist of the elected members of the Legislative Assembly constituted for the territory under the Government of Union Territory of Andaman and Nicobar Islands Act, 2012".

### THE SCHEDULE

(See section 4, 12 and 43)

### FORMS OF OATH OR AFFIRMATIONS

#### I

Form of oath or affirmation to be made by a candidate for election to the Legislative Assembly:—

"I, A.B., having been nominated as a candidate to fill a seat in the Legislative Assembly, do swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established and that I will uphold the sovereignty and integrity of India."

#### II

Form of Oath or affirmation to be made by a member of the Legislative Assembly:—

"I, A.B., having been elected a member of the Legislative Assembly, do swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established, and that I will uphold the sovereignty and integrity of India and that I will faithfully discharge the duty upon which I am about to enter."

#### III

Form of Oath of office of a member of the Council of Ministers:—

"I, A. B., do swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will faithfully and conscientiously discharge my duties as a Minister, and that I will do right to all manner of people in accordance with the Constitution and the law without fear or favour, affection or ill-will."

#### IV

Form of Oath of Secrecy for a member of the Council of Ministers:—

"I, A.B., do swear in the name of God/solemnly affirm that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration or shall become known to me as a Minister except as may be required for the due discharge of any duties as such Minister."

## STATEMENT OF OBJECTS AND REASONS

Even after sixty-four years of Independence, the Union territory of Andaman and Nicobar Islands has not been provided with a democratic set-up with a Legislative Assembly for the governance of the affairs of the Union territory Administration. All powers are vested in the Lieutenant Governor and the bureaucracy continues to reign supreme. In the absence of a Legislative Assembly with devolution of powers, the people of the Islands are not enabled to have a sense of belonging and involvement in the developmental activities of the Islands and do not have a say in the utilisation of the funds provided by the Central Government, in proper perspective.

The type of Pradesh Council provided to the Union territory with members indirectly elected from panchayats and a single municipality with no powers is not at all befitting to a democratic set-up and devolution of powers. However, the functioning of the Pradesh Council since its formation in the year 1981 has set the background for constitution of a Legislative Assembly on the pattern of Puducherry or Delhi. The population of the Union territory has crossed three-lakh mark and the literacy percentage is more than 81 per cent. and heading towards achieving cent per cent. literacy as per norms prescribed by the Government of India.

There have been series of demands from the people of the Union territory for providing a Legislative Assembly at least with limited powers. The Island Development Authority had agreed in principle to constitute a Legislative Assembly for the Islands. The Estimates Committee of the Parliament had also recommended for the constitution of a Legislative Assembly for the Union territory. Now, since a three-tier Panchayati Raj system is also in the offing in pursuance of the Constitution (Seventy-third) Amendment Act with the idea of devolution of powers at panchayat, block and district levels, it is high time that a Legislative Assembly is provided to set the tone and direction for the governance of the Union territory Administration on democratic norms.

The Bill seeks to achieve the aforesaid objectives.

NEW DELHI;

BISHNU PADA RAY

November 28, 2011

## FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for setting up of a Legislative Assembly for the Union territory of Andaman and Nicobar Islands. Clauses 7(5), 19 and 43 (3) related to payment of salaries and allowances to the Speaker, the Deputy Speaker, Members of the Legislature and the Ministers. The expenditure on such salaries and allowances and other expenditure of incidental nature such as on the additional staff in the Legislative Assembly and Council of Ministers will be met from the Consolidated Fund of the Union territory of Andaman and Nicobar Islands.

Clause 38 provides for the delimitation of thirty single member territorial constituencies for the proposed Assembly of the Union territory of Andaman and Nicobar Islands. Clause 55 provides that Union territory of Andaman and Nicobar Islands will be represented by one member in the Council of States. For this purpose, a non-recurring expenditure of about rupees fifty lakhs is likely to be incurred. This expenditure will be met from the Consolidated Fund of India.

The Bill does not involve any other expenditure either of a recurring or non-recurring nature.

## MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 33 of the Bill empowers the Legislative Assembly of the Union territory of Andaman and Nicobar Islands to make rules, subject to the provisions of this Bill, for regulating its procedure and conduct of its business. It also provides that the Lieutenant Governor shall, after consultation with the Speaker of the Legislative Assembly and with the approval of the President make rules for securing the completion of the financial business, regulating the procedure and conduct of business in the Legislative Assembly in relation to any financial matter or to any Bill for appropriation of monies out of the Consolidated Fund of the Union territory of Andaman and Nicobar Islands and for prohibiting the discussion of or asking any question which affect the discharge of the functions of the Lieutenant Governor in so far as he is required to act in his discretion.

Clause 44 of the Bill empowers the President to make rules regarding allocation of business to Ministers and transaction of such business. It further empowers the Lieutenant Governor to make rules prohibiting the manner of authenticating the orders issued in his name.

Clauses 46 (3) and 47(3) of the Bill provide that the Lieutenant Governor may make rules regarding the custody, etc., of the Consolidated Fund of the Union territory of Andaman and Nicobar Islands and the Contingency Fund of the Union territory of Andaman and Nicobar Islands.

Clause 53 of the Bill empowers the President to issue orders for removing any difficulty in giving effect to the provisions of this Bill and in particular in relation to the Constitution of the Legislative Assembly.

The matters mentioned above are of a procedural nature and it is difficult to provide for them in detail in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

T.K. VISWANATHAN,

*Secretary-General.*